

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

Date of Reserving the Order	Date of Pronouncing the Order
31.03.2016	25.04.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.20314 of 2002

The Management
Vl.SPL.112, Nagavedu Primary
Agricultural Cooperative Bank Ltd.,
Nagavedu, Arakkonam Taluk,
Vellore District. ... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Vellore, Vellore District.
2.N.Kirubanandam Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the first respondent in I.D.No.252 of 1997, dated 14.02.2002, on its file and quash the same.

For petitioners .. Mr.P.Krishnan

For Respondents ... Mr.V.Ajoy Khose for R2
R1-Court

O R D E R

The petitioner is the Management of a Primary Agricultural Co-operative Bank and the challenge in this Writ Petition is to the award of the Labour Court, Vellore in I.D.No.252 of 1997, dated 14.02.2002, being a dispute raised by the second respondent against his non-employment. In this Writ Petition, the petitioner shall be referred to as the Management and the second respondent as the Workman.

2. The Workman was appointed as a Salesman by order dated 19.12.1978, in a fair price shop, established and administered by the Management for distribution of essential food articles under the Public Distribution System. During 1983, the Workman was promoted as Clerk and in 1992, further promoted as Cashier. On 23.12.1992, the Workman was placed under suspension on the allegation that he has misappropriated the funds of the Management Society and a notice in this regard, was issued to him to repay the misappropriated amount.

3. It is the case of the Management is that the Workman accepted his guilt and paid the misappropriated amount in two instalments on 23.12.1992, a sum of Rs.10,000/- and on 30.12.1992, a sum of Rs.1,055/-. It is thereafter, a charge memo was issued on 10.03.1993, for which the Workman submitted his reply on 14.05.1993. Not being satisfied with the reply/explanation, the Management appointed an enquiry officer to conduct a domestic enquiry, who had submitted a report on 31.08.1993, holding that the charges have been proved. Second show cause notice was issued on 28.09.1993, for which the Workman submitted his reply on 07.10.1993 and not being satisfied with the reply, the Workman was removed from service by order dated 30.04.1996. The revision petition filed by Workman against such order was dismissed by the Revisional Authority by order dated 14.05.1996. Subsequently, the Workman submitted an appeal memorandum to the President of the Management society and the President constituted a sub-committee to probe into the entire episode and based on the report submitted by the sub-committee on 10.09.1997, the Management entered into a settlement under Section 18(1) of the Industrial Disputes Act, 1947, (I.D.Act) and he was issued an order of appointment on the same date, but the same was not implemented inspite of the Workman written representation, dated 03.11.1997, he raised a dispute before the Labour Officer, for which a reply was sent by the Management and ultimately, Workman moved the Labour Court by raising a dispute which was taken on file as I.D.No.252 of 1993. The Labour Court adjudicated the matter and considered the oral and documentary evidence placed before it and passed an award dated 14.02.2002, directing the Workman to be reinstated with continuity of service and 75% backwages. Challenging the same, the Management has filed this Writ Petition.

4. Mr.P.Krishnan, learned counsel for the Petitioner Management after reiterating the factual submissions contended that the Workman having repaid the misappropriated amount, the Labour Court erred in reinstating the Workman, who had been punished for a proven charge. Further, the Labour Court did not properly appreciate the explanation given by the Workman and admittedly, the shortage of Rs.11054.80ps was repaid by the Workman, which is sufficient to hold him guilt and the Management was justified from dismissing him from service. Further, it is submitted that at the time of inspection by the Sub-Registrar, Co-

operative Societies on 22.12.1992, the shortage was deducted which amount was paid by the Workman. Further, it is submitted that the Labour Court erroneously directed payment of 75% of backwages, without properly appreciating the facts and circumstances of the case. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of M.V.Bijlani vs. Union of India & Ors., reported in 2006 (5) SCC 88.

5. Mr.V.Ajoy Khose, learned counsel appearing for the Workman contended that the Labour Court after careful consideration of the entire facts and circumstances, passed the award and this Court will not re-appreciate the factual matrix, especially when the reason assigned by the Labour Court is cogent and proper. It is further submitted that though the enquiry officer had submitted his report during August 1993 and the Workman had given a reply to the second show cause notice on 07.10.1993, till 30.04.1996, no action was initiated and this delay remains unexplained. Further, it is submitted that the report of the enquiry officer, was not marked before the Labour Court and therefore, cannot be relied upon. Further, it is submitted that mere production of the document will not amount to proof, unless oral evidence is given to prove the contents and no oral evidence was adduced by the Management in support of their stand. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of LIC & Anr., vs. Ram Pal Singh Bisen reported in (2010) 4 SCC 491. Further, it is submitted that the enquiry officer is bound to give reasons as to why the evidence on the side of the Management was convincing, when there are two sets of evidence i.e., one in favour of the Workman and the other in favour of the Management. To support such contention reliance was placed on the decision of the Hon'ble Supreme Court in the case of Anil Kumar vs. Presiding Officer & Ors., reported in 1986 (1) LLJ 101. Further, it is submitted that a document, which was not marked and not supplied to the delinquent and not allowed to cross examine the witness concerned, cannot be relied on to hold delinquent guilty. To support such proposition, reliance was placed on the decision in the case of State Bank of India & Ors., vs. D.C.Aggarwal & Anr., reported in 1993 (1) LLJ 244. Further, it is submitted that as held by the Hon'ble Supreme Court in the case of K.Lakshmanan vs. Govt., of Tamil Nadu & Anr., reported in 1992 (1) LLJ 380, the enquiry officer cannot import his personal knowledge and cannot place reliance on the any document behind the back of the delinquent.

6. Heard the learned counsels appearing for the parties and perused the materials placed on record.

7. Before the Labour Court, the Workman examined himself as WW-1 and marked 34 documents as Exhibits W1 to W34. On the side of the Management, there was no oral evidence and 18 documents were marked as Exhibits M-1 to M-18. The Labour Court framed two

questions for consideration as to whether the domestic enquiry was conducted in a fair and proper manner and whether the workman should be directed to be reinstated with backwages, continuity of service and other benefits. The Labour Court threadbare analysed the factual averments and came to a conclusion that the domestic enquiry was not conducted in a fair and proper manner. The Labour Court examined as to the correctness of the report submitted by the enquiry officer and whether the enquiry officer, who conducted a domestic enquiry appreciated the factual position in a proper perspective and whether the finding of guilt as recorded by the enquiry officer was borne out of the charges framed against the Workman. After considering the evidence, which was available as well as the findings of the enquiry officer, the Labour Court concluded that it is not a case of misappropriation as alleged in the report submitted by the enquiry officer. The Management contended before the Labour Court that if it is established that even one rupee is misappropriated, then the proper punishment would be dismissal from service. While considering such submission, the Labour Court pointed out that on facts, it has not been established that there has been misappropriation committed by the Workman. The Labour Court then proceeded to consider the facts and came to a conclusion that the shortage or deficit in cash at the time of inspection cannot lead to an automatic inference that there has been misappropriation. However, the Labour Court came to a conclusion that the Workman was not diligent and prompt in maintaining the records and therefore, it opined that some punishment need to be imposed on the Workman and accordingly, the Labour Court by the impugned award, set aside the order of dismissal from service and directed reinstatement of the Workman with continuity of service and restricted the backwages to 75%.

8. The learned counsel for the petitioner Management by relying upon the decision in the case of M.V.Bijlani vs. Union of India & Ors., (supra), submitted that although the charges in a departmental proceeding is quasi-criminal in nature, it is not required to be proved like a criminal trial i.e., beyond all reasonable doubt and the enquiry officer has to analyse the documents and must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. There can be no second opinion or quarrel over such legal proposition, but in the instant case, one of the specific issues framed by the Labour Court was whether the domestic enquiry was fair and proper. While holding that the domestic enquiry was vitiated on account of serious flaws, Labour Court examined as to whether the enquiry officer on the available material came to the correct conclusion. This exercise was permissible under law, since the parties were granted liberty to lead evidence. In spite of such opportunity, the Management did not lead any oral evidence. On appreciation of the entire evidence as well as the findings of the enquiry officer, the

Labour Court recorded a finding that it is not a case of theft. Therefore, the decision in the case of M.V.Bijlani vs. Union of India & Ors., (supra), cannot be applied to the facts and circumstances of this case.

9. That apart, the Labour Court rightly held that the enquiry officer, who conducted the domestic enquiry cannot import his personal knowledge and he cannot rely upon documents, which were not made known to delinquent and this being the law laid down by the Hon'ble Division Bench in the case of K.Lakshmanan vs. Govt., of Tamil Nadu & Anr., (supra). It is evident from the enquiry officer's report, dated 31.08.1993, reliance has been placed on the report dated 05.01.1993, which document was not furnished to the petitioner and such document which was neither marked nor supplied to the delinquent cannot be relied upon as the delinquent had lost a valuable opportunity to cross examine the witness through whom the document had to be marked and this conclusion is supported by the decision of the Hon'ble Supreme Court in the case of State Bank of India & Ors., vs. D.C.Aggarwal & Anr., (supra).

10. That apart, the Management issued the second show cause notice, dated 28.09.1993 on the finding recorded by the enquiry officer dated 31.08.1993, calling upon the petitioner to submit his explanation, within a period of 10 days, this notice had been marked as Exhibit W-10. The Workman submitted his reply, dated 07.10.1993, (Exhibit W-11). Thereafter, nothing transpired for more than three years and the matter was put in cold storage. In fact, the Special Officer addressed the Deputy Registrar, by letter dated 15.10.1993 (Exhibit W-12) seeking permission to impose a minor penalty on the Workman. It is only on 30.04.1996, the order of dismissal was passed wherein there is a reference to a proceedings of the Deputy Registrar, dated 29.01.1996, said to have been received by the society on 10.04.1996. The contents of the said proceedings was not made known to the Workman.

11. Thus considering all the aspects, this Court is of the view that the findings recorded by the Labour Court was fair and proper and there is no perversity in approach, the evidence available on record has been properly appreciated and the findings of the enquiry officer was threadbare analysed to come to a conclusion that the charge of misappropriation has not been established.

12. In the light of the above, this Court is not inclined to re-examine the factual findings recorded by the Labour Court as if examining the matter as a second appellate Court.

In the result, the Writ Petition fails and it is dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

pbn

To

The Presiding Officer,
Labour Court,
Vellore, Vellore District.

1 cc to Mr.V. Ajay Khose, Advocate, Sr. 25784
1 c to Mr.P. Krishnan, Advocate, Sr. 26110

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