

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **15.09.2016**

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

W.A.No.314 of 2012

All Indian Overseas Bank Employees' Union
Rep. by its President,
763, Anna Salai,
Chennai - 600 002.

.... Appellant

Vs.

1. The Industrial Tribunal
High Court Buildings Campus,
Chennai - 600 104.

2. The Indian Overseas Bank
Rep. by its Chairman and
Managing Director,
762, Anna Salai,
Chennai - 600 002.

.... Respondents

Writ Appeal filed under Clause 15 of Letters Patent, against
the order of this Court, dated 30.08.2011 made in W.P.No.4319 of
2000.

For Appellant : Mr.V.Lakshminarayanan
for Mr.C.R.Chandrasekaran

For Respondents : R1 - Tribunal
Mr.K.Srinivasamurthy for R2

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

This writ appeal has been preferred by the writ petitioner against the orders passed by the learned single Judge, dated 30.08.2011 in W.P.No.4319 of 2000.

2. The factual aspects leading to the filing of writ petition in nutshell are as follows :

(i) The employee-workman Mr.J.S.Rajkumar joined the service of the Indian Overseas Bank in clerical cadre on 18.11.1968. He had been working in the Nagercoil branch. He was the Secretary of the union and organised strike alleging certain grievances against the Branch Manager. He was served with a charge memo, dated 06.02.1980, alleging certain acts of commission and omission. He was also placed under suspension on 09.02.1980.

(ii) The matter was entrusted to the CBI and the CBI, after investigation laid charge sheet against the petitioner in Court of law. He faced the trial and the case ended in acquittal. Simultaneously the employee was served with another charge memo, dated 25.09.1981 containing five charges. Following the

submissions of the statement by the employee, the Disciplinary Authority conducted domestic enquiry and on the findings given by the enquiry officer, the second show cause notice was issued and finally punishment of dismissal from service was imposed.

(iii) The dispute regarding the above dismissal was referred to the Industrial Tribunal for adjudication under Section 10 (1) (d) of the Industrial Disputes Act, 1947. Before the Industrial Tribunal, the petitioner filed application under Section 11-A of the Industrial Disputes Act thrice, seeking preliminary enquiry, so as to decide the fairness of the domestic enquiry. The Industrial Tribunal in miscellaneous application in M.A.No.300 of 1996 and then, in M.A.No.32 of 1997, by order, dated 20.01.1997 and 24.02.1997 respectively dismissed the applications, holding that the domestic enquiry was fair and proper and there is no perversity in the findings. In the third application in I.A.No.169 of 1997, both the parties filed joint memo agreeing to argue both on the maintainability of the I.A and the Industrial Dispute on merits together, in order to give a comprehensive disposal.

3. The Industrial Tribunal, after analysing the divergent contentions of both sides, passed the Award dismissing the claim of

the petitioner. Thus, the Industrial Tribunal confirmed the punishment of dismissal of the employee.

4. Aggrieved against the award, writ petition has been filed on behalf of the workman and the learned single Judge, after considering the arguments of both sides and all materials placed before him, dismissed the writ petition, rejecting the contentions of the petitioners, including the perversity in the findings of the domestic enquiry. Against the order of the learned single Judge, the writ petitioner has come forward with this appeal.

5. The learned counsel appearing for the appellant vehemently contends that there is violation of natural justice and the workman was not given sufficient opportunity to put forth his case in domestic enquiry; that witnesses, not put on notice to the employee have been examined; that management witness No.1 was not subjected to cross-examination; that management witness No.2 was not even aware of the charges; that 161 statements marked through CBI Investigating Officer, M.W.8 were taken as gospel truth and finding was given on the basis of those statements and that management witness No.1 and 2 were examined in the absence of delinquent official.

6. The learned counsel appearing for the second respondent per contra contends that fairness of domestic enquiry was elaborately dealt with and decided by the Industrial Tribunal in the preliminary enquiry; that both the Tribunal as well as the learned single Judge have elaborately dealt with the arguments advanced with respect to perversity and rightly held that there is no perversity in the findings of the enquiry officer; that the finding of the enquiry officer is based on material evidence and that the customers were also examined to establish the misappropriation committed by the employee and that the workman was given fullest opportunity during domestic enquiry and the learned single Judge has rightly dismissed the writ petition.

7. Before delving upon the contentions of both sides, the following decisions of the Supreme Court are to be borne in mind as to the powers of the High Court to interfere with the orders of the dismissal of an employee.

(i) In **R.K.Kindra v. Delhi Admn & Ors**, reported in **1984-II-LLJ 517**, it has been held as follows :

"20. Where the order of dismissal is sought to be sustained on a finding in the domestic enquiry which is shown to be perverse and the enquiry is vitiated as suffering from non-application of mind

the only course open to us is to set it aside and consequently relief of reinstatement must be granted and nothing was pointed to us why we should not grant the same."

(ii) In **M.V.Bijlani v. Union of India**, reported in **(2006)**

5 SCC 88, it has been held as follows :

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

(iii) In **H.P.Transport Corpn. v. K.C.Rahi**, reported in **(2008) 2 SCC (L&S) 1120**, it has been held as follows :

""6. That the respondent was served with a notice recorded by the Tribunal is finding of fact. In our view, therefore, the High Court has exceeded its jurisdiction by reversing the fact recorded by the Tribunal in exercise of its power under Article 226. Power under Article 226 is to interfere only when there is miscarriage of justice or an error of law on the face of the record but not to reappreciate the evidence recorded by the court of first instance."

8. Thus, it is well settled that power under Article 226 of the Constitution of India is limited and the Court can interfere only when there is miscarriage of justice or an error of law on the face of the record. This Court cannot reappreciate the evidence and reappreciation of evidence is permissible to the Labour Court and the Industrial Tribunal, under Section 11-A of Industrial Disputes Act.

9. After insertion of Section 11-A in the Industrial Disputes Act, 1947, the Industrial Tribunal is clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself

whether the said evidence relied on by an employer, establishes the misconduct alleged against a workman. The Tribunal can differ from the finding of misconduct recorded by an employer if a proper case is made out. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11-A of the Industrial Disputes Act. Thus, what once largely in the realm of the satisfaction of the employer has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter. The above principles of law has been derived by the Hon'ble Supreme Court in Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd.,

10. Thus it is well settled that this Court under Article 226 of the Constitution of India can interfere only when there is violation of natural justice or perversity leading to miscarriage of justice or an error of law on the face of the record.

11. The charges levelled against the workman are as follows :

"1. You collected the monthly installments remitted by Sri.C.N.Sigamani towards ACWO accounts No.3/72 & 4/72, a total sum of Rs.720/- but remitted in the accounts only a

sum of Rs.100/-. You also closed the accounts pre-maturely paying only Rs.400/- to him and failed to account for the balance.

2. You affected unauthorised withdrawal of Rs.2300/- and Rs.550/- on 06.12.1979 and 12.12.1979 respectively from the S.B.Account No.9499 of Sri Samuel Paul on the basis of forged withdrawal slips and you also made false entries in the pass book to project a wrong picture of the balance available in the account.

3. While you collected from Sri Samuel the monthly instalments towards his account No.7/72 regularly you remitted into the account only a sum of Rs.3700/- retaining with you the balance of money collected. You also made entries in the pass book which are not reflected in the Books of the branch making it appear that all the money collected by you were remitted into the account.

4. You had fraudulently withdrawn a sum of Rs.1800/- on 01.02.1978 and Rs.900/- on 01.08.1978 from the S.B.A/c. of T.Kumardas (A/c.No.5442).

5. You made false credit entries in the pass books of account holders as per details given

below to make it appear that you had remitted funds in their accounts in discharge of personal loans taken by you from the account holders. The entries made by you are not supported by credit vouchers nor are they reflected in the relative ledgers folios."

12. This Court carefully perused the records and is satisfied that the enquiry officer had given fullest opportunity to put forth the delinquent case during enquiry. No doubt when the workman sought adjournment for enquiry on the ground of illness, the enquiry officer directed him to appear for enquiry without giving adjournment on the basis of the certificate of the Doctor about his fitness produced by the Department. When the workman tried to drag on the proceedings, there is nothing wrong in refusing the adjournment that too on the basis of the medical certificate produced by the Department. This does not lead to any adverse inference about the enquiry.

13. On perusal of the entire proceedings of the domestic enquiry, it is found that sufficient opportunity has been afforded to the workman in conducting enquiry. All the charges levelled against the petitioner are borne by records. It is seen from the records that

pass books of the customers relating to the charges were recovered from the residence of the employee. There were manipulations in entries with respect to the amounts of withdrawal and deposits between the ledger and pass books of the customers. The Enquiry Officer gave his findings mainly on the basis of the documents placed before him. The customers, Sri.T.Kumaradas and Smt.D.Rosamma examined as Management Witness No.1 and 2 stated before the Enquiry Officer that they were account holders and admitted the entire statement given before the Investigating Officer as true. Their evidence had not been controverted by the employee. Therefore, the contention of the learned counsel appearing for the appellant that 161 statements given before the Investigating Officer were taken as gospel truth by the enquiry officer is not acceptable.

14. The contention that the employee was not put on notice about the witnesses examined in the domestic enquiry is not acceptable as he had not raised so before the enquiry officer. The arguments of the learned counsel for the respondent that the petitioner was informed in advance about the examination of witness cannot be brushed aside, when there are several representations by the employee to the enquiry officer with respect to the enquiry.

15. Another contention of the appellant is that M.W.1 and M.W.2 were examined in his absence. It is true that both the above witness were examined in the absence of the delinquent officer and it has been mentioned in the proceedings that the delinquent was not found anywhere in the branch premises, in spite of the presence of witnesses. Barring the evidence of M.W.1 and M.W.2, the reasons given for the finding of the enquiry officer is justifiable and acceptable and this Court does not see any perversity in the findings of the enquiry officer. Thus, there is no violation of principles of natural justice or miscarriage of justice in the findings.

16. Yet another contention of the learned counsel appearing for the appellant is that the officer, who sanctioned prosecution and examined as a witness in the criminal case is the enquiry officer. The learned counsel appearing for the second respondent contends that no doubt the enquiry officer sanctioned the prosecution and he has not spoken to about the factual aspects excepting about the sanction he ordered. No doubt after perusing the entire papers and having satisfied that prima facie case has been made out, sanction must have been accorded. But that does not lead to infer that the same officer if sits as quasi judicial authority will have a prejudicial mind. The officer, who sanctioned

prosecution and framed charges after having satisfied about the prima facie case from the materials placed before him if engaged as enquiry officer is not expected to have any prejudicial approach and the contention of bias is not acceptable.

17. As far as punishment is concerned, the learned counsel appearing for the appellant contends that the alleged misappropriation is temporary misappropriation and the amount is also meagre and the punishment awarded is disproportionate to the charges. But as rightly pointed out by the learned counsel appearing for the second respondent, by citing several judgments of the Hon'ble Supreme Court, a Bank employee who deals with money of the depositors and customers is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer.

18. It is also settled that once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. The proved charges in this case are misappropriation of the amount of the customers either in deposit or withdrawal.

19. It does not matter whether the amount is small or large and also it is not the matter that misappropriation is either temporary or permanent. Once the employee loses faith of the employer with respect to conduct and integrity, that too in the nature of employment in the Bank, the employee does not deserve for any sympathy or leniency.

20. The Industrial Tribunal, having power under Section 11-A of Industrial Disputes Act, reappreciated the entire evidence and decided against the appellant. The learned single Judge also confirmed the award, after analysing as to perversity and other aspects. This Court does not find any reason to interfere with the finding and orders of the learned single Judge. Therefore, the writ appeal fails and accordingly, the same is liable to be dismissed.

In fine, the writ appeal is dismissed, confirming the order of the learned single Judge, dated 30.08.2011 made in W.P.No.4319 of 2000. No order as to costs.

(A.S., J.) (P.K., J.)
15.09.2016

Index : Yes

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To

1. The Industrial Tribunal
High Court Buildings Campus,
Chennai - 600 104.
2. The Chairman and Managing Director
Indian Overseas Bank
762, Anna Salai,
Chennai - 600 002.

A.SELVAM, J.
AND
P.KALAIYARASAN, J.
tsvn

Judgment
in
W.A.No.314 of 2012

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