

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.13309 of 2010
and
M.P. Nos. 1/2010 & 1/2014

UCO Bank
rep. by its Chief Officer, Zonal Office,
169 Thambu Chetty St.,
Chennai-1
...Petitioner

Vs.

1.The Presiding Officer
Industrial Tribunal
Chennai - 600 104.

2. A. Sappani ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for records on the file of the first respondent relating to Award dated 26.06.2009 passed in I.D. No.2 of 1991 and quash and pass further orders.

For Petitioner : Mr. Srinath Sridevan
for Mr. R. Ramesh

For Respondents : R-1 Court
Mr. Balan Haridas for R2

सत्यमेव जयते
O R D E R

The prayer in the writ petition is for a Writ of Certiorari, calling for records on the file of the first respondent relating to the Award dated 26.06.2009 passed in I.D. No.2 of 1991 and quash.

2. The case of the petitioner Bank is that the second respondent joined services in their Bank, as peon-cum-watchman, on 27.02.1974, at Pettai Branch, Tirunelveli District. During his service, the second respondent was charged with crime, such as misconduct, misappropriation, tampering of records, forging and withdrawing amounts by opening fictitious accounts. Based upon the same, enquiry was conducted and the enquiry officer

gave his report on 19.10.1988, finding that the delinquent was guilty of grave charges. Pursuant to the same, the Bank dismissed the second respondent from service, by order dated 13.12.1988. As against the same, the second respondent preferred an appeal, which was dismissed on 12.01.1989. Thereafter, a Dispute was raised in I.D. No. 1 of 1989 and the first respondent by an Award dated 30.03.1993 held that the enquiry conducted by the petitioner Bank was not fair and proper and that the the same is vitiated and so ordered reinstatement with continuity of service and backwages.

3. The petitioner Bank, stating that no opportunity was given to lead fresh evidence, filed a Writ Petition challenging the Award in W.P. No. 12337 of 1994. This Court, by order dated 15.04.2001 remanded the matter back to the first respondent, for affording an opportunity to the petitioner Bank and to lead evidence to substantiate their contention. Not satisfied with the order of this Court, as referred above, the petitioner Bank inter alia preferred an appeal in W.A. No.2334 of 2004 and the Division bench of this Court, dismissed the said Writ Appeal, by an order dated 07.04.2004. Thereafter, as per the earlier order of remand of this Court, an enquiry was once again conducted by the first respondent Tribunal and ultimately the present order of impugned Award was passed on 26.06.2009. In the meanwhile, the petitioner Bank also preferred a Special Leave Petition, as against the order passed by the Division Bench of this Court in W.A. No.2334 of 2004 and the Hon'ble Apex Court also, by an order dated 13.09.2004, dismissed the Special Leave Petition. That is how, the present impugned award dated 26.06.2009 passed by the first respondent Tribunal, has been put under challenge in the present writ petition, with the aforesaid prayer.

4. Heard learned counsel for both sides and perused the material available on records.

5. Learned counsel appearing for the petitioner Bank would contend that the main charge framed against the second respondent is Charge No.4, for opening fictitious accounts in the name of U.Ramachandran and G.Balasubramanian and deposited 22 cheques aggregating to a sum of Rs.1,11,000/- and after encashing the same, withdrew the amount in the name of the said fictitious persons and ultimately the account was closed. Only based on this main charge, the other charges are framed.

6. Learned counsel appearing for the petitioner Bank would submit that there was a detailed enquiry conducted by the disciplinary authority and ultimately an order of punishment of removal from service, was awarded to the second respondent. In spite of the said fact, the second respondent had raised a case before the Industrial Tribunal. The first respondent though initially had not permitted the petitioner Bank to let in

evidence, in the second round of litigation, by name of de-nova, ofcourse pursuant to the orders of this Court, the petitioner Bank was permitted to lead evidence and several documents were marked. However, without considering any of the materials placed by the petitioner Bank either by way of documents or by way of oral evidence, the first respondent has come to a cryptic conclusion that the charges framed against the second respondent were not proved and ultimately passed the impugned award, thereby the order of removal was set aside and also the first respondent had given further relief to the second respondent, for reinstatement in service, with continuity of service. It was also ordered that the backwages, which had already been ordered and deposited in the Court, can be benefited by the second respondent. Learned counsel for the petitioner Bank in support of his contention relies upon the decision of the Hon'ble Supreme Court in the case of the Divisional Controller, KSRTC vs. A.T. Mane reported in 2005 (3) SCC 254 and another decision of the Kerala High Court in the case of Vijaya Mohini Mills vs. Industrial Tribunal & Anr. , in O.P. No. 2667/1988-P.

7. Learned counsel appearing for the petitioner Bank ultimately submitted that the order impugned, made by the first respondent, is not on the basis of the evidence lead before the Tribunal and therefore the conclusion reached by the first respondent would not stand in the legal scrutiny and hence the same should be interfered with and the writ petition has to be allowed.

8. On the other hand, learned counsel appearing for the second respondent would contend that eventhough charges of misappropriation were framed against the second respondent, who is working in the petitioner Bank, there was no direct or corroborative evidence available for consideration, either before the Enquiry officer or before the first respondent. After appreciating both side evidence, the first respondent came to the conclusion that the charges framed against the second respondent were not proved and therefore passed the impugned award. Learned counsel would further contend that even in the earlier round of passing the Award by the first respondent, the only grievance of the petitioner Bank was that they were not permitted to let in evidence and for the said purpose, the petitioner Bank had approached this Court and as a last attempt, they have gone upto Supreme Court and thereafter they were permitted to let in evidences afresh, before the first respondent. However, now the fresh evidences were lead before the first respondent on the side of the petitioner Bank and only the evidences which were already let in were considered by the first respondent, before coming to a conclusion. In that view of the matter, learned counsel for the second respondent would contend that absolutely there is no perversity on the part of

the first respondent, in reaching a conclusion and moreover the decision taken by the first respondent unless shakes the conscious of the Court, the factual finding recorded by the Court below, need not be disturbed by interfering with, unnecessarily. In this regard, learned counsel for the second respondent, would further contend that the law is well settled and he has also cited two decisions of the Hon'ble Apex Court in the case of Neeta Kaplish vs. Presiding Officer, Labour Court & anr. Reported in (1999) 1 SCC 517 and also the case of Union of India & Ors. vs. Gyan Chand Chattar reported in (2009) 12 SCC 78. Further, learned counsel for the second respondent would contend that absolutely there is no plausible/ cognizable reason to interfere with the finding of the first respondent Court and therefore he prays to dismiss the writ petition.

9. This Court has given ample consideration to the rival submissions of the learned counsel for both sides and perused the material available on records.

10. As pointed out by learned counsel for the petitioner Bank, the main charge made by the second respondent is misappropriation of the Bank's fund by opening fictitious account in the name of U. Ramachandran and G. Balasubramaniam, in Savings Bank Account No.1458 and 1952 respectively, in the petitioner's Bank at Pettai Branch, Tirunelveli. In this regard, learned counsel for the petitioner drew the attention of this Court, in respect of the charges framed against the second respondent, originally. The said charge No.4, being the main charge, would proceed to say that the second respondent, while he was working as a sub staff in the petitioner's Branch at Tirunelveli, had indulged in unlawful activity by way of opening fictitious accounts in the name of one U. Ramachandran with Savings Bank Account No.1458 and in the name of G.Balasubramaniam with Saving Bank Account No.1952 and he deposited 22 number of cheques, for a total value of Rs.1,11,000/- in the said accounts and had subsequently withdrawn the money. While involving in this, the second respondent had changed many document records and have also erased certain documents. Therefore, he has committed the offence, as per Clause 19.5 of the Agreement, entered between the Bank and the employee.

11. In respect of the said charge, there is no direct evidence to show that any complaint by any third party has ever been made to the petitioner Bank, as to their loss of money for the said 22 cheque leaves. If the charge as framed by the petitioner Bank is accepted, then there should have been complaint by third parties or customers, to the petitioner Bank or to the Management of the petitioner Bank, to the extent that their cheque leaves sent for collection to the said Branch, where the second respondent was working, were missing or the

same were not deposited for collection in the appropriate account and that they have not received the cheque or they have not encashed the same by depositing the said cheque leaves in their respective account or withdrawal of cash, after encashing it directly. In the absence of these complaints, it is very difficult to make an allegation against the second respondent that he was instrumental for opening the fictitious account, in the name of fictitious persons and deposited 22 cheque leaves and withdrawing the entire amount and then the account was closed. When this Court has shown its anxious consideration on the evidences recorded, both by the disciplinary authority as well as the first respondent, absolutely, there is no direct evidence to say that a fictitious account has been opened either by the second respondent directly or with connivance, while there is no complaint whatsoever about the loss of money or loss of cheque leaves. When that being the position, the very basis for the main charge against the second respondent would go and when the main charge itself goes, the connected charges also go and have no legs to stand.

12. This aspect has been considered in proper perspective in the impugned award. Ultimately, the first respondent has recorded its finding, which reads as follows :-

"17. It is contended that because of the security issues involved CBI report is not produced. It is not as if the physical security of the State is involved. It is the matter relating to the internal transactions of a particular functioning of the branch. No prejudice will be caused to the bank if the report is produced. The non production of the report would cause prejudice to the petitioner in making up his defence because it is the basic documents upon which the edifice the bank case has been built up. The management cannot seek protection on the ground that it is a confidential document. It can be a confidential document only till the investigation is over. The non-production of report coupled with non-explanation as to how the petitioner alone can do all these acts alleged, speaks volume about the unfairness of the enquiry.

18. At one point of time, the management alleges that the petitioner is the guilty of opening fictitious account by creating a fictitious person by name Balasubramanian. At the same time in the course of evidence, the management witness says that only at the request of the

account holder accounts would be closed and that the account of Balasubramanian was closed after getting the signatures. This implies that Balasubramanian is not fictitious person and he is the real person. It is not the case of the management that Balasubramanian has given any complaint. There is also no explanation as to why Balasubramanian has not been examined before the court. "

13. With regard to the judgments cited by the respective learned counsel, firstly on behalf of the petitioner, he has relied upon the judgment of the Hon'ble Apex Court in the case of the Divisional Controller, KSRTC vs. A.T. Mane reported in 2005 (3) SCC 254, which was a case of proved misappropriation. When the case of misappropriation have been proved, whether a particular punishment awarded by the disciplinary authority can be interfered with, is the issue. In this regard, paragraph 12 of the judgment is extracted below :

"12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

14. In the case dealt with, by the High Court of Kerala, it has been held that the Tribunal cannot reject the enquiry report on the ground that circumstantial evidences regarding drunkenness was relied and ultimately the order of the Industrial Dispute was quashed. In the case on hand, since the misappropriation was not proved and the enquiry officer's report was not rejected on the ground of circumstantial evidences but in the absence of direct evidences, the two citations relied on, by the learned counsel for the petitioner would not give any support to the case of the petitioner Bank.

15. In respect of the two citations relied by the learned counsel for the second respondent, passed by the Hon'ble Apex Court in the case of Neeta Kaplish vs. Presiding Officer, Labour Court & anr. Reported in (1999) 1 SCC 517 and the case of Union of India & Ors. vs. Gyan Chand Chattar reported in (2009) 12 SCC 78, enunciating the principle that when effective opportunity of

hearing was not given to the appellant before the Labour Court, it was right in calling upon the Management to lead fresh evidence. Only in that context, such judgment was made. In that case also, an opportunity was given to the petitioner to let in additional or fresh evidence, ofcourse subsequent to the orders of this Court, in the earlier round of litigation, as referred to above. Therefore, even the one lacuna, as pointed out by the learned counsel for the petitioner, was rectified by the first respondent, as in the denova enquiry the petitioner was permitted to let in evidence and he has let in evidence, marked several evidences and it was duly considered by the first respondent and ultimately the findings were given with all these consideration, already been shown by the first respondent. As has been referred to above, since there has been no evidence to show that the allegation of misappropriation as framed by the petitioner Bank, against the second respondent, it cannot be held to be proved and therefore it has to be held, as not proved.

16. Therefore, this Court finds no merit to interfere with such a finding given by the first respondent and in that view of the matter, this Court is not inclined to interfere with the impugned Award passed by the first respondent and therefore the case of the petitioner Bank is liable to be rejected.

17. Since the second respondent has already attained the age of superannuation, question of reinstatement would not arise at this stage, as directed by the first respondent in the impugned award. However, in respect of all the other benefits as has been directed by the first respondent in the impugned Award, the second respondent shall be fully eligible and entitled. Therefore, the petitioner Bank is directed to settle those service benefits to the second respondent, as directed by the first respondent in the order impugned, within a period of three months from the date of receipt of a copy of this order.

18. In the result, the Writ Petition is dismissed, with the above made observation and direction. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

The Presiding Officer
Industrial Tribunal
Chennai - 600 104.

+1 cc to Mr.Srinath Sridevan,advocate,sr.63475

+1 cc to Mr.Balan Haridas,advocate,sr.62995.

gj(co)
krd 19/12

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