

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.24709 of 2001

E.Manickam
57, Madha Koil Street,
Mahabalipuram - 603 104.
Chengai District.

..Petitioner

-Versus-

1. The Industrial Tribunal
at Chennai
High Court Building Campus
Chennai-600 104.

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

... Respondents

Petition filed under Section 226 of the Constitution of India praying for issuance of a writ of mandamus, to call for the records pertaining to the impugned award of the first respondent dated 19.02.2001 in ID.No.92/94 and quash the same and direct the second respondent to reinstate the petitioner with all attendant benefits including back-wages.

For Petitioner	:	Mr.C.R.Chandra Sekar
R1	:	Tribunal
For R2	:	Mr.Srinivasamoorthy for Mr.N.G.R.Prasad

सत्यमेव जयते
ORDER

This writ petition has been filed to call for the records pertaining to the impugned award of the first respondent dated 19.02.2001 in ID.No.92/94, quash the same and direct the second respondent to reinstate the petitioner with all attendant benefits, including back-wages.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 2nd respondent.

3. The petitioner was working as a Shroff / Godown Keeper in Mahabalipuram Branch of Indian Overseas Bank. For certain acts of commission and omission, the petitioner was placed under

suspension on 13.07.1988. Thereafter, departmental proceedings were initiated against the petitioner which ultimately culminated in the order dated 25.08.1989 which reads as follows :

"Now on the quantum of punishment, I wish to observe as follows:

Considering your past record of service, taking a lenient view, I am of the opinion that the ends of justice will be fully met by merely discharging you in terms of para 17.6(e) of the Bipartite Settlement instead of awarding the punishment of dismissal proposed in the show cause notice.

I therefore condone your misconduct and pass this original order, merely discharging you from bank's service with immediate effect and without notice in terms of Para 17.6(e) of the Bipartite Settlement between the bank and its workmen dated 14.12.1966 as amended upto date.

However, with regard to the period of suspension, please note that you will not be entitled to any other amount other than the subsistence allowance already paid to you. "

4. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Appellate Authority, who, by order dated 19.10.1989, confirmed the order passed by the Disciplinary Authority. The petitioner raised an Industrial Dispute and the matter was referred to the Industrial Tribunal in ID.No.92 of 1994.

5. After considering the evidence adduced by both the parties, the Industrial Tribunal, by order dated 19.02.2001 in ID.No.92 of 1994, confirmed the findings of the Appellate Authority and the Disciplinary Authority. The conclusion portion of the said order reads as follows:

"Similarly, in 1988 III LLN 652, it was held that a bank employee discounting his own cheques and allowing overdrafts in excess of his power had committed serious misconduct and was dismissed.

Similarly in 1996(9) Supreme Court Cases P.69 it was held that Acting beyond one's authority was misconduct within the meaning of Rule 24 of Central Bank of India Officers Employees Regulations and allowing overdrafts or passing cheques involving substantial amount beyond his authority should not be treated as error of judgment. Again in 1998 III LLN P.89, it was held that in banking business absolute

devotion, diligence and integrity need to be preserved by every bank employee and if this is not observed confidence of depositors would be impaired and it was held in 2000 II LLJ P.1395 that once misappropriation stood proved, showing sympathies uncalled for, it was described in 1977 I LLN 391 as misplaced sympathy.

So, in this case, Section 11A of the Industrial Disputes Act, 1947 could not be applied. The dismissal of the petitioner is thus found justified. Award passed accordingly. No costs."

6. Aggrieved by the order passed by the Industrial Tribunal, the petitioner is before this Court.

7. The learned counsel appearing for the petitioner submitted that the Disciplinary Authority and the Appellate Authority had concurrently imposed punishment of discharge from service, whereas, the Industrial Tribunal had converted the punishment into dismissal from service which is not sustainable in law.

8. There appears to be sufficient force in the submission of the learned counsel appearing for the petitioner. Though the Industrial Tribunal has the power to modify the order passed by the Appellate Authority or the Disciplinary Authority either by enhancing or reducing the punishment, yet, in this case, what was referred to the Industrial Tribunal by the Government is only with regard to the correctness of the order of discharge passed by the Appellate Authority. Therefore, the Industrial Tribunal has gone beyond the reference made by the Government and thereby, has exceeded its jurisdiction.

9. In view of the foregoing discussion, the order of discharge passed by the Disciplinary Authority and the Appellate Authority are hereby confirmed and the operative portion of the award dated 19.02.2001 passed by the Industrial Tribunal in ID.No.92/1994 is modified to the effect that instead of dismissal, the petitioner is discharged from service and consequently, the petitioner will be entitled to get other benefits attached to the punishment of discharge if any, in terms of the Disciplinary Authority's order, if not, already disbursed.

The writ petition stands allowed in the above terms. Costs made easy.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mk

To

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

+1 cc to Mr.N.G.R.Prasad Advocate sr 73121
+1 cc to Mr.C.R.Chandrasekar Advocate sr 73382

WP.No.24709 of 2001

pvs (co)
aa09/01/2017

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