

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.Nos.20850 of 2000 and 4218 of 2003

and

W.M.P.No.30322 of 2000

Pandyan Grama Bank
rep by its Chairman
Master Complex
Collectorate
Virudhunagar 626 002.

Petitioner in W.P.20850/2000

Vs

1.The Presiding Officer
Industrial Tribunal
2nd Floor,
City Civil Court Buildings
Chennai 600 104.

2.P.Gopalakrishnan [deceased]

3.Angammal

4.Rameshkumar

5.Sathishkumar

6.Sureshkumar

7.Arunkumar Respondents in W.P.20850/2000
[R3 to R7 substituted vide order dated 02.01.2017
in WMP.No.382/11 in WP.20850/2000]

1.P.Gopalakrishnan [deceased]

2.Angammal

3.Rameshkumar

4.Sathishkumar

5.Sureshkumar

6.Arunkumar

Petitioners in W.P.4218/2003

Vs

1.The Presiding Officer
Industrial Tribunal
2nd Floor,
City Civil Court Buildings
Chennai 600 104.

2.Pandyan Grama Bank
rep by its General Manager
Master Complex
Collectorate
Virudhunagar 626 002.

Respondents in W.P.4218/2003

[P2 to P6 substituted vide order dated 02.01.2017
in WMP.No.383/11 in WP.4218/03]

W.P.No.20850 of 2000 filed under Article 226 of the
Constitution of India to issue a writ of certiorari calling
for the concerned records from the 1st respondent Industrial
Tribunal, Chennai 104 and quash the award dated 18.07.2000 in
I.D.No.43 of 1993.

W.P.No.4218 of 2003 filed under Article 226 of the
Constitution of India to issue a writ of certiorarified
mandamus calling for the records pertaining to the Award dated
18.07.2000 passed by the 1st respondent in I.D.No.43/93, quash
the same insofar as denying the petitioner the relief of
continuity of service, backwages and other attendant benefits
and direct the 2nd respondent to reinstate the petitioner with
continuity of service, full backwages and other attendant
benefits as paid and payable to other NVN Agents, Award costs.

In W.P.No.20850 of 2000:

For petitioner Mr.K.Srinivasamurthy
for Mr.N.G.R.Prasad
For R2 to R6 Mr.V.Ajoy Khose

In W.P.No.4218 of 2003:

For petitioners Mr.V.Ajoy Khose
For R2 Mr.K.Srinivasamurthy
for Mr.N.G.R.Prasad

RESERVED ON	PRONOUNCED ON
02.01.2017	12/01/01

COMMON ORDER

While W.P.No.20850 of 2000 has been filed seeking a writ of certiorari calling for the concerned records from the 1st respondent Industrial Tribunal, Chennai 104 and quash the award dated 18.07.2000 in I.D.No.43 of 1993, W.P.No.4218 of 2003 has been filed seeking a writ of certiorarified mandamus calling for the records pertaining to the Award dated 18.07.2000 passed by the 1st respondent in I.D.No.43/93, quash the same insofar as denying the petitioner the relief of continuity of service, backwages and other attendant benefits and direct the 2nd respondent to reinstate the petitioner with continuity of service, full backwages and other attendant benefits as paid and payable to other NVN Agents and award costs.

2. For the sake of convenience, the parties will be referred to by their name. Since both the writ petitions arise out of the same award, they are considered and decided by this common order.

3. The incontrovertible facts leading to the filing of the present writ petitions run thus:

[a] Gopalakrishnan, the second respondent in W.P.No.20850 of 2000 and the petitioner in W.P.No.4218 of 2003, joined the Pandyan Grama Bank, petitioner in W.P.No.20850 of 2000 and second respondent in W.P.No.4218 of 2003 [hereinafter would be referred to as "the Bank"]. Gopalakrishnan joined the Bank as a collection agent, pursuant to an Agency Agreement dated 02.07.1979. The Bank is required to work among rural people and strive to bring them into the Banking system. For achieving this objective, the Bank is entitled to appoint collection agents, who will go around the village and canvass for getting small time customers, for which they will be paid some commission, depending upon the quantum of deposits mobilised through such customers. The agent will introduce a person to the Bank, for whom, an account will be opened and on trust, the customer will make daily payments to the agent, who, in turn, is required to deposit the amount in the account of the customer. The agent will have a handy pass book. The customer will be entitled to loan, to a tune of 75% of the deposit amount standing to his credit.

[b] Sometime during January-February 1996, the Bank received complaints from various customers that the amounts given by them to the agent did not reflect in their accounts. This led to a preliminary enquiry being conducted by the Bank and it came to light that one Chidambaram, an employee of the Bank, in collusion with some others, including Gopalakrishnan, had created fictitious loans in the name of existing customers and had misappropriated their monies. Since the Bank felt that Gopalakrishnan was only a commission agent, they terminated his services by issuing a paper advertisement on

09.06.1990. Aggrieved by the termination, Gopalakrishnan raised an Industrial Dispute before the Labour Officer under Section 2A of the Industrial Disputes Act, 1947 and on the failure of conciliation proceedings, the Government referred the following dispute to be adjudicated by the Industrial Tribunal:

"Whether Shri P.Gopalakrishnan, NVN agent is a workman of Pandyan Grama Bank? If so, whether the action of the management of the bank in terminating the services of Shri P.Gopalakrishnan w.e.f. 2.2.90 is legal and justified? If not, to what relief the workman is entitled to?"

[c] It was contended by Gopalakrishnan that he is a permanent employee of the Bank and that his services ought not to have been terminated without conducting an enquiry. The case was taken on file as ID No.43 of 1993 by the Industrial Tribunal, Chennai. On behalf of Gopalakrishnan, one witness was examined and 8 exhibits marked. On behalf of the Bank, two witness were examined and 35 documents were marked.

[d] After considering the evidence adduced by both sides, the Tribunal held that the Management had failed to prove that Gopalakrishnan was involved in defalcation and therefore, directed his reinstatement without backwages. Challenging the said Award insofar as it relates to reinstatement of Gopalakrishnan, the Bank has filed W.P.No.20850 of 2000 and challenging that portion of the award relating to denial of backwages, Gopalakrishnan has filed W.P.No.4218 of 2003.

4. Heard Mr.K.Srinivasamurthy, learned counsel for the Bank and Mr.V.Ajoy Khose, learned counsel for Gopalakrishnan.

5. As regards the first contention of the Bank that Gopalakrishnan, being a commission agent, cannot be considered as a regular employee of the Bank, Mr.Srinivasamurthy appearing for the Bank gave up this plea and conceded that such agents are now treated as Bank employees.

6. Admittedly, in this case, no enquiry was conducted by the Bank before terminating the services of Gopalakrishnan. However, it is always open to the Management to adduce necessary evidence before the Industrial Tribunal to prove the misconduct. This is exactly what the Bank has done in the present case.

7. It is the contention of the Bank that one Mariappan was first appointed to investigate into the allegations and submit a report. Mariappan had submitted a detailed report, which has been marked as Ex.M.45 before the Industrial Tribunal. The Bank had issued a show cause notice dated 15.05.1990 to Gopalakrishnan, wherein, they have catalogued

six instances of misappropriation with details. The said show cause notice was marked as Ex.M4 and it may be necessary to extract a portion of it for better appreciation of the accusation against Gopalakrishnan:

Sl. No.	NVN a/c No.	Name of the depositor	DL No.	Date	Amount Rs.
1	749 63	Abdulkalam "	46/88 40/89	30-08-88 17-10-89	7500/- 8000/-
2	748 62	A.Amoorsulthan "	59/88 41/89	17.11.88 17.10.89	12500/- 8000/-
3	39	S.Marimuthu "	23/89 43/89	08.06.89 20.10.89	7000/- 7000/-
4	703	N.Sekar "	37/88 52/88	04.08.88 22.10.88	5000/- 10000/-
5	43	Seeni Mohamed	30/89	14.06.89	5000/-
6	657	S.Marimuthu	38/88	13.08.89	5000/-

8. To prove this, the Management examined two witnesses, viz., Soundara Nageswaran [M.W.1] and Mariappan [M.W.2].

9. To appreciate the allegations, it may be necessary to take the case of one account holder and expatiate on it. For example, one Abdul Kalam is an account holder who was introduced to the Bank by Gopalakrishnan. An NVN Account No.749 was opened in the name of Abdul Kalam on 12.05.1988 on the introduction of Gopalakrishnan. At the time of opening of the account, the specimen signature of Abdul Kalam was collected and kept in the Bank. An NVN account will be in currency only for one year from the date of opening, i.e. from 12.05.1988 to 12.05.1989. Monies daily collected by Gopalakrishnan from Abdul Kalam should be deposited in his account and on the amount so deposited, Abdul Kalam is entitled to 70% as loan. In the name of Abdul Kalam, a loan for Rs.7,500/- was sanctioned on 30.08.1988 in DL No.46 of 1988 by Chidambaram, as if the same was disbursed to him on 30.08.1988, whereas, in the account of Abdul Kalam, there was only Rs.8,200/- as on 30.08.1988 and therefore, he would not be entitled to a loan of Rs.7,500/-. In the Bank ledger, to

justify the loan of Rs.7,500/-, an entry has been made as if there is a sum of Rs.10,300/- available in the account. The signature of Abdul Kalam for having received the amount in the voucher has been forged. In the meantime, on 25.05.1989, Abdul Kalam closed the main account No.749 itself, whereas, the account book showed that there is an outstanding of Rs.7,500/- from Abdul Kalam in loan account no.46 of 1988. This sum of Rs.7,500/- with interest of Rs.793/- amounting to Rs.8,923/- has been deposited back into the Bank on 17.10.1989 by Gopalakrishnan and the loan account No.46 of 1988 has been closed. Thus, an ingenious method has been adopted by Chidambaram, the Bank Official, in collusion with other officials of the bank, including Gopalakrishnan, by which, without the knowledge of the account holders, loans were sanctioned, withdrawn and repaid.

10. Mr.V.Ajoy Khose, learned counsel for Gopalakrishnan contended that the Bank has not suffered any loss, because, the loan amounts of all the six persons have been repaid.

11. In the considered opinion of this Court, this argument deserves only to be stated to be rejected, because even temporary misappropriation is an offence. The Bank had sent the signatures of the deposit holders in the loan accounts to the Tamil Nadu Forensic Sciences Laboratory for comparing the same with the signatures of the customers available in the specimen card. The Handwriting experts report showed that the admitted signature of the customer did not tally with the disputed signature in the loan account and repayment voucher.

12. In the teeth of such overwhelming materials available, the Industrial Tribunal had held that the Bank had not proved that it was Gopalakrishnan who had misappropriated the amount and that the loans could not have been sanctioned by Gopalakrishnan, as he was only a commission agent and further, the Bank had not taken action on the officials of the Bank who had sanctioned fictitious loan. These specious findings of the Tribunal are clearly against the evidence on record adduced by the Bank.

13. In the cross-examination of Soundara Nageswaran [M.W.1], to a specific question put by Gopalakrishnan, he has clearly stated that the Bank has filed a complaint against its officials and Gopalakrishnan, based on which a case in District Crime Branch Cr.No.12 of 1992 has been registered and disciplinary action also has been taken against the officers of the Bank who were involved in the misappropriation. Notwithstanding such clear evidence on record, strangely, the Industrial Tribunal has held that the Management has not taken

any action against the Bank officials involved in the offence.

14. Admittedly, this misappropriation cannot be done by one single Officer. Therefore, in the criminal prosecution, a charge of conspiracy will be framed against all the accused during trial. But, such a charge cannot be framed in a domestic enquiry, because, domestic enquiry proceedings will be conducted separately for different classes of employees. For example, even in this case, the Management was under the impression that Gopalakrishnan was only a commission agent and on that premise, it terminated the agency. Therefore, joint enquiry was not conducted.

15. In the cross-examination of Soundara Nageswaran (M.W.1), Gopalakrishnan himself has elicited an answer that the six accounts were settled by the agent himself. In the chief examination of Soundara Nageswaran, he has very clearly stated that Ex.M.28 - voucher relating to one Nizamuddin, has been signed by Gopalakrishnan himself. Similarly, he has further stated that the voucher marked as Ex.M.23 relating to Muniandi has been signed by Gopalakrishnan. These allegations have not been denied even by way of suggestion in the cross-examination.

16. The report of the expert will not say who has committed the forgery, because, an expert does not give evidence on a fact in issue, as he obviously cannot be an eye witness to the forgery. His report is an opinion evidence relevant under Section 45 of the Evidence Act. Gopalakrishnan has not challenged the report at all. In the cross-examination of Gopalakrishnan, he has unequivocally admitted that it was he who had closed the loan account of six customers under Exs.M23 to M25. On a further query in the cross-examination as to whether the customer came to the Bank to close the account, he has stated that he does not know. This answer by Gopalakrishnan in the cross-examination is indeed fatal to him.

17. Thus, the evidence on record shows that on the one hand, Chidambaram had manipulated the records to sanction loan and on the other hand, Gopalakrishnan discharged the loans without the knowledge of the account holders. Looked at from any angle, the reasoning given by the Industrial Tribunal that the Management had not proved the allegations against Gopalakrishnan is ex facie perverse and warrants inference by this Court under Article 226 of the Constitution of India.

Accordingly, W.P.No.20850 of 2000 preferred by the Management is allowed and the order passed by the Industrial Tribunal is set aside. Consequently, W.P.No.4218 of 2003 filed by Gopalakrishnan for backwages is hereby dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

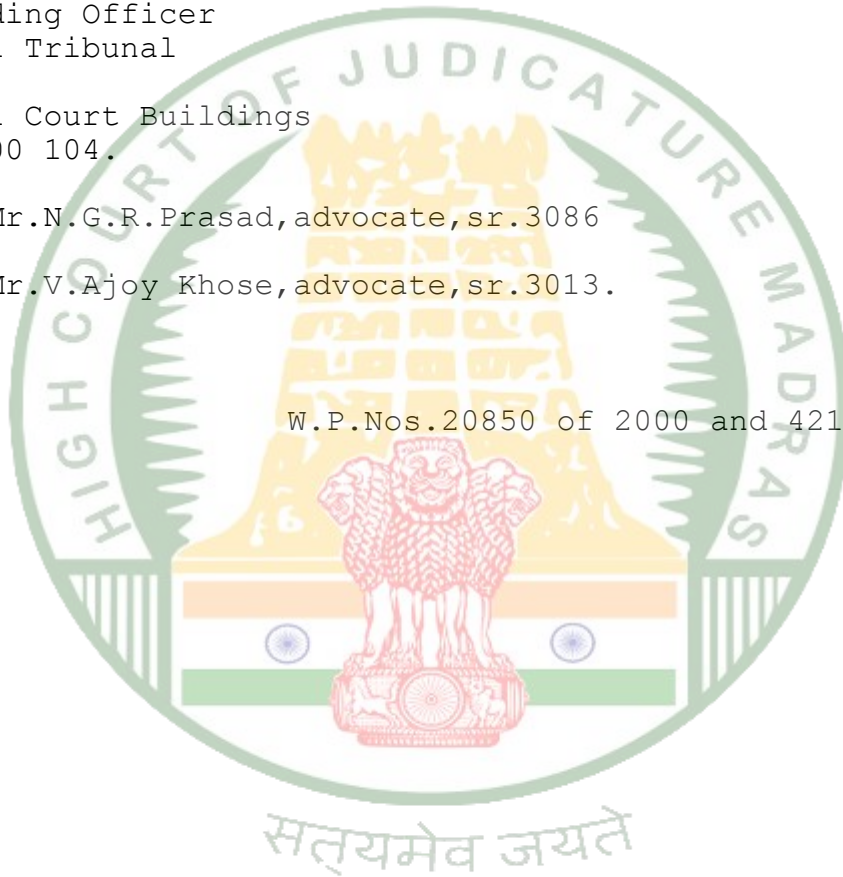
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krd 14/2

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