BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)NO.1293 OF 2016
and
C.M.P(MD)No.8884 of 2016

The Assistant General Manager,
The Lakshmi Vilas Bank Limited,
HRD Department, Administrative Office,
Karur. :Appellant/Petitioner

.vs.

1.The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
Chennai.

2.P.G.Venkatesan : Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act,praying this Court to set aside the order passed by this Court in W.P(MD)No.6766 of 2007, dated 14.03.2016.

Prayer in WP(MD). 6766/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, call for the records of the 1st respondent relating to the award in I.D.No. 30 of 2006 dated 19/12/2006 and quash the same.

For Appellant :M/s.K.R.Laxman

For 1st Respondent :Court

For Respondent-2 :M/s.S.Arunachalam

JUDGEMENT

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[Judgement of the Court was made by **M.VENUGOPAL, J.**]

The Appellant/Bank has preferred the instant Writ Appeal as an 'aggrieved person' as against the order, dated 14.03.2016 in W.P(MD)No.6766 of 2007 passed by the Learned Single Judge in dismissing the Writ Petition.

2.Heard both sides.

3.Earlier, the Learned Single Judge, while passing the impugned order, dated 14.03.2016 in W.P(MD)No.6766 of 2007(filed by the Second Respondent/Writ Petitioner) at paragraph 17 and 18, had observed the following:

> ''*17.It has already been pointed out that vital facts so as to substantiate the first charge have not been put forth on the side of the petitioner. Even at the risk of repetition, the Court would like to point out that the petitioner has failed to mark the confession statements alleged to have given by the said Gurunathan nor examined him in domestic enquiry. Unless the alleged fact that the said Gurunathan has given a sum of Rs.1,00,000/- to the second respondent is established, the Court cannot come to a conclusion that a sum of Rs.1,00,000/- has been recovered from the second respondent on the basis of confession alleged to have been given by him. It is a settled principle of law that a confession given to a police officer is inadmissible in evidence. Even assuming without conceding that the confession alleged to have been given by the second respondent can be relied upon, as animadverted to earlier, the same has not been marked either for the scrutiny of Enquiry Officer or first respondent. Therefore, it is very clear that the petitioner has not adduced vital evidence for the purpose of establishing the prime charge framed against the second respondent.*
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> 18.The first respondent after considering the bereft of evidence on the side of the petitioner and also considering the vital lapses committed in domestic enquiry, has rightly set aside the dismissal order passed against the second respondent. To put it in short, the award passed by the first respondent is not perverse nor illegal and therefore, the present Writ petition deserves to be dismissed.''

and ultimately dismissed the Writ Petition.

4.Questioning the order of dismissal, dated 14.3.2017 in W.P (MD)No.6766 of 2007 passed by the Learned Single Judge, the Appellant/Bank has projected the instant intra-Court Writ Appeal primordially taking a plea that the Learned Single Judge had failed to visualise the misconduct committed by the Second

Respondent by considering the case, in its entirety. In this connection, the Appellant/Bank takes a plea that the Learned Single Judge in the impugned order passed in the Writ Petition had dealt with Charge No.1 alone in the entire order and left the two other charges, which had resulted in serious mis-carriage of justice. Insofar as the second charge is concerned, when the Second Respondent/Writ Petitioner was aware and kept silent while the cheque was issued without confirming and managing the sufficient balance in the account, which had resulted in the dis-honour of the cheque, in turn thereby affecting the reputation of the Appellant/Bank.

5.It is represented on behalf of the Appellant that the serious misconduct was not dealt with by the Learned Single Judge in a proper and real perspective. The Appellant/Bank in the Memorandum of Grounds of Appeal, has taken a stand that the Second Respondent/Writ Petitioner (being a Delinquent Employee) in financial matters is expected to be in clean hands and when he had already suffered a decree in A.P.No.81 of 1996 in a proceeding instituted by the Mayavaram Financial Chit Corporation in and by which, his salary was subjected to attachment through a warrant for Rs.5864.75/-. His conduct in such financial discipline was quite serious in nature and this factual reality was not borne- in-mind by the Learned Single Judge at the time of passing of impugned order in the Writ Petition.

6.It is to be relevantly pointed out that the Second Respondent/Employee joined in the service of Appallent/Bank initially as Peon and later on was promoted as Clerk and later was promoted as Clerk and was attending to the cash counter at Ariyalur Branch of the Bank. In the said Branch of the bank, three clerks (including the Second Respondent), Accountant, Jewel Appraiser and Branch Manager were working. The Accountant by name Ahilu on 27.05.1999, was on deputation to another branch outside Ariyalur. As a matter of fact, the Appellant/Bank had a Current Account No.7003 with State Bank of India, Ariyalur for depositing, withdrawal or Transfer of Surplus funds.

7.It is to be noted that the Cheque Book for the said sum was with the custody of the Branch Manager or Accountant or either of the officers had to affix their signature for withdrawal or transfer of funds. The Appellant/Bank's Branch Manager, on 31.05.1999 had instructed the State Bank of India, Ariyalur, telephonically, to transfer Rs.8 lakhs to their main Branch at Chennai. But the Manger of the State Bank of India, Ariyalur informed that the Appellant/Bank had insufficient funds in their account. On verification by the Branch Manager of the Appellant/Bank, it was found that on 27.05.1999, a cheque was stolen and the signature of Accountatnt (Ahilu) was forged and Rs.3 lakhs was encashed in the name of Ramesh. The Branch Manager of the Appellant/Bank reported the act of fradulent withdrawal of

Rs.3 lakhs to the Ariyalur Police on 01.06.1999 and that the Police took B.Gurunathan, Clerk of the Appellant/Bank to custody and during interrogation, he had confessed about the forgery act and withdrawal of sum of Rs.3 lakhs on 27.05.1999.

8.It is the version of the Appellant/Bank that the said B.Gurunathan had informed the Police that the Second Respondent was given a sum of Rs.1 lakh. The second respondent was taken into custody on 02.06.1999 by the Police and admitted the receipt of Rs.1 lakh and that he gave a statement before the Police and ultimately, the Second Respondent had paid a sum of Rs.1 lakh to the Police on 05.06.1999. Pending Departmental action, the Second Respondent/Employee was suspended from 08.06.1999.

9.The first charge levelled against the Second Respondent/Employee is that he has supressed the vital information from the ambit of Branch Officials of the Appellant/Bank, with a view to conceal the facts on account of fraudulent withdrawal of Rs.3 lakhs. The Second charge against the Second Respondent/Employee is that despite being a bank employee and aware that issuance of cheque without maintaining sufficient balance, amounts to an offence liable for criminal prosecution, had issued a cheque No.252966, dated 10.04.1999 to and in favour of Madras Investments for Rs.1 lakh drawn on G.N.Street, Chennai Branch of the Appellant and committed a prejudicial act to the interest of the Bank, a gross misconduct as per Clause 5(j) of the 'Bipartite Settlement'. The Third charge against the Second Respondent is that as a Bank employee, he had not conducted with financial discipline and non payment of lesser amount leading to passing of salary attachment warrant, he tornished the image of the Bank.

10.The plea of the Second Respondent is that the enquiry was not conducted in Tamil, which is contrary to the Provisions of Industrial Employment Standing Orders Act, 1946. The management had not examined B.Gurunathan, who purportedly withdrew Rs.3 lakhs from State Bank of India, Ariyalur. There is no direct evidence to establish that the charge-sheeted workman received Rs.1 lakh from B.Gurunathan. Before the First Respondent/Tribunal in I.D.No.30 of 2006, on the side of the workman, Exs.W1 to W20 were marked. Witness W.W.1 was examined. Exs.M1 to M14 were marked on the side of the Management/Bank. However, no one was examined as witness on the side of the Bank.

11.It comes to be known that though the occurrence/incident took place in the year 1999, the Bank made it as a misconduct on 19.12.2003, the Tribunal opined that issuing cheque without sufficient funds in one's account is not mentioned as misconduct and the disciplinary procedure prescribed in 'Bipartite Settlement' and hence, the charge framed against the Second Respondent/Bank was without any substance. In respect of the third charge, viz., the receipt and salary attachment warrant for Rs.5864.75 paise, the same was not mentioned as misconduct as per the 'Bipartitie Settlement'. In fact, the Appellant/bank, was not able to point out any Regulation or Standing Orders to the effect that warrant of attachment as a misconduct. The Tribunal ultimately set aside the dismissal of Second Respondent/Employee and directed the management to reinstate the workman forthwith into service with an entitlement of continuity of service and conferring of all other attendant benefits, full wages etc.

12.Insofar as the aspect of pending criminal case is concerned, the First Respondent/Tribunal held that the same cannot be relied on because of the pendency of criminal case against B.Gurunathan in regard to the fraudulent withdrawal of Rs.3 lakhs.

13.The version of the Appellant is that the First Respondent/The Central Government Industrial Tribunal-cum- Labour Court, Chennai had failed to appreciate the back-ground of the case which pertains to the faith and confidence reposed on the employee and in fact, merely dismissing the charges on the ground that those charges are not misconduct as per 'Bi-partite Settlement' is an erroneous one and the same is liable to be set aside.

14.The other ground taken in the Memorandum of Grounds of Appeal is that the First Respondent/The Central Government Industrial Tribunal-cum-Labour Court had not independently dealt with the charges in the manner known to Law and in fact, the First Respondent/The Central Government Industrial Tribunal-cum -Labour Court had given an improper weightage to the 'Bi-partite Settlement' and the same has resulted in an adverse order being passed against the Second Respondent. Besides the above, the Appellant/Bank comes out with a plea that the First Respondent/Tribunal should have provided an opportunity to the Appellant /Bank to substantiate its case and justify the dismissal order by adducing evidence, if the enquiry was not a fair one.

15.Per contra, it is the submission of the Learned Counsel for the Second Respondent/Employee that the Second Respondent was employed initially as a sub-staff and and later, he was promoted as a Clerk. On 27.5.1999, he served in the cash counter at Ariyalur Branch of the Appellant/Bank. During his tenure of Office, it came to light that he received a sum of Rs.1 lakh from one B.Gurunathan, a co-employee and wilfully suppressed this pivotal information. As a matter of fact, the said Gurunathan withdraw a sum of Rs.3 lakhs from the account of the Appellant/Petitioner/Bank(through State Bank of India), resulting in action being taken against the Second Respondent/Employee. Moreover, in E.P.No.358 of 2000, the salary of the Second Respondent/Employee was attached and as against the misconduct/allegations levelled against the Second

Respondent/Employee, an Enquiry Officer was appointed. The Enquiry Officer, ultimately rendered a finding against the Second Respondent/Employee,as per his report. Based on the Enquiry Report, a final order was passed against the Second Respondent/Employee, resulting in punishment of dismissal.

16.There is no dispute in regard to the fact that as against the order of dismissal, the Second Respondent/Employee filed an Industrial Dispute in I.D.No.30 of 2006, before the First Respondent/The Central Government Industrial Tribunal-cum -Labour Court, Chennai and after contest, an award dated 19.12.2006 was passed resulting in the setting aside of the dismissal order passed by the Appellant/Bank. Pursuant to the award, the First Respondent/The Central Government Industrial Tribunal-cum-Labour Court, Chennai had directed the Second Respondent/Employee to be re-instated with all benefits. Being dissatisfied with the award, dated 19.12.2006 passed by the First Respondent/The Central Government Industrial Tribunal-cum- Labour Court, Chennai, the Appellant/Bank as Writ Petitioner, had filed a Writ Petition in W.P(MD)No.6766 of 2007.

17.It comes to be known that the Second Respondent/ Employee during the period i.e., 1999, served as a Clerk in Cash Management Section and one B.Gurunathan had served in the Miscellaneous Section had illegally withdraw a sum of Rs.3 lakhs from Account No.7003 of Ariyalur Branch of State Bank of India. From and out of the said sum of Rs.3 lakhs, the Second Respondent/Employee had received a sum of Rs.1 lakh and that apart, the Second Respondent/Employee had stood as a surety in the Mayavaram Financial Chit Corporation in respect of an Co-employee and since the said co-employee had not repaid the same, a decree came to be passed in A.P.No.81 of 1996 and subsequently, the E.P.No.358/2000 was passed and the Second Respondent/Employee's salary came to be attached.

18.As against the Second Respondent/Employee, three charges were framed in the departmental proceedings. Based on the departmental proceedings initiated against him, an Enquiry Officer was appointed, which resulted in filing of an Enquiry Report. Resting on the Enquiry Officer's Report, the Second Respondent/Employee was dismissed from service. As against the order of dismissal, the Second Respondent/Employee had filed a Industrial Dispute in I.D.No.30 of 2006, which, at the risk of repetition, this Court points out the award was passed on 19.12.2006 in the said Dispute to and in favour of Second Respondent/Employee.

19.At this stage, the Learned Counsel for the Appellant/Bank emphatically contends that the First Respondent/The Central Government Industrial Tribunal-cum-Labour Court, Chennai had simple set aside the order of dismissal passed against the Second

Respondent/Employee, without taking into account of the primordial fact that a proper enquiry was conducted and requisite opportunity was provided to the Second Respondent/Employee. In short, the contention advanced on behalf of the Appellant/Bank is that the award, dated 19.12.2006 in I.D.No.30 of 2006 passed by the First Respondent/The Central Government Industrial Tribunal- cum-Labour Court, Chennai suffers from perversity, infirmity and as such, the same does not stand in the moment scrutiny in the eye of Law.

20.In this connection, it is not out of place to make a pertinent mention that a forceful plea is taken on behalf of the Second Respondent/Employee to the effect that in regard to the first charge, no credible evidence was adduced on the side of the Appellant/Bank and that the Enquiry Officer found the Second Respondent/Employee guilty on the basis of oral version and not on the basis of relevant documentary evidence. Moreover, it is reported on behalf of the Second Respondent/Employee that the First Respondent/The Central Government Industrial Tribunal-cum-Labour Court, Chennai is very much competent in Law to advert to the report of the domestic Enquiry Officer, as to whether the same is based on reliable, acceptable and proper evidence.

21.Besides that, it is the submission of the Learned Counsel for the Second Respondent/Employee that the First Respondent/The Central Government Industrial Tribunal-cum-Labour Court, Chennai had rightly opined that the finding of the Enquiry Officer pertaining to the first charge was in entirety a baseless one and as such, the 'award', dated 19.12.2006 in I.D.No.30 of 2006 requires no interference in the hands of this Court, at this distant point of time.

22.It must be borne in mind that the Labour Court or the Industrial Tribunal, as the case may be, ordinarily is not to substitute its own view, just because two views can possibly be taken on the basis of the available material evidence on record. There is no quarrel over the proposition that the Industrial Tribunal or the Labour Court can consider the plea of 'proportionality.

23.The main thrust of the argument of the Learned Counsel for the Appellant is that the Second Respondent/Employee gave a voluntary confession statement before the Police and pursuant to the said confession, a sum of Rs.1 lakh was recovered from the Second Respondent/Employee. Apart from that, the main accused I.e., B.Gurunathan also gave a confession statement whereby he had categorically admitted that he had illegally withdraw a sum of Rs.3 lakhs from the account of the Appellant/Bank, maintained in State Bank of India.

24.It cannot be brushed aside that the Appellant/Bank is to prove that not only pursuant to the alleged confession furnished by the Second Respondent/Employee, a sum of Rs.1 lakh was recovered in the process, from him. Apart from that, the Appellant/Bank is to establish that the said B.Gurunathan parted with a sum of Rs.1 lakh to the Second Respondent/Employee. Unfortunately, these aspects are conspicuously absent. In short, the Appellant/Bank had not proved the origin/genesis of the first charge framed against the Second Respondent/Employee. No wonder, the First Respondent/The Central Government Industrial Tribunal-cum-Labour Court, in Law, is possessed with the necessary powers to re-appreciate the material evidence available on record, relating to the charges framed against the Second Respondent/Employee.

25.More importantly, the purported 'Confession Statement' of B.Gurunathan was not marked as a documentary evidence. Also that, the said B.Gurunathan was not examined in the 'Domestic Enquiry'. It is an axiomatic principle in Law that the confession made before the Police Officer is not admissible in evidence. In reality, unless the purported fact that the said Gurunathan parted with a sum of Rs.1 lakh to the Second Respondent/Employee is proved, then a Court of Law could not come to the conclusion that a sum of Rs.1 lakh was recovered from the Second Respondent/Employee, solely based on the confession so called , given by him. Owing to the non-marking of the confession statement of the concerned person as an 'Exhibit' and because of the yet another fact that the Enquiry Officer, who conducted the domestic 'Enquiry Proceedings' against the Second Respondent/Employee was very much handicapped in coming to the conclusion, one can safely come to a conclusion that on the side of the Appellant/Bank that no reliable and convincing and credible evidence was let in, in the domestic enquiry conducted against the Second Respondent/Employee and an omission in this regard is certainly not a favourable circumstance to and in favour of the Appellant/Bank, in the considered opinion of this Court. Moreover, this Court on going through the whole gamut of the 'Award', dated 19.12.2006 in I.D.No.30 of 2006 passed by the First Respondent/The Central Government Industrial Tribunal-cum-Labour Court, Chennai is of the resultant view that the award in question is free from any legal flaw. Per contra, the same is just, fair, valid and correct one and besides the same, being very much sustainable in the eye of Law. Looking at from any angle, the present Writ Appeal filed by the Appellant/Bank sans from merits. Consequently, the Writ Appeal fails.

26.In fine, the present Writ Appeal stands dismissed, leaving the parties to bear their own costs. The order of the Learned Single Judge, dated 14.03.2016 in W.P(MD)No.6766 of 2007 is confirmed by this Court, for the reasons assigned in this Writ

Appeal. No costs. Consequently, connected Civil Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (C.O)

/True copy/

Sub Assistant Registrar

To

The Presiding Officer,
Central Government Industrial Tribunal-cum-
Labour Court,
Chennai.

+1cc to Mr.S.ARUNACHALAM,Advocate,SR. 91723
+1cc to Mr.K.R.LAXMAN,Advocate,SR. 91605

W.A(MD)NO.1293 OF 2016
and
C.M.P(MD)No.8884 of 2016
07.12.2017

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