

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.4.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.595 of 2018
and
C.M.P.No.5795 of 2018

State Bank of India
rep. by its Deputy General Manager,
Zonal Office, Coimbatore. Appellant/R2

Versus

1. A.Thangavelu R1/Petitioner

2. Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
1st Floor B Wing No.16,
Haddows Road,
Shastri Bhawan, Chennai. R2/R1

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 25.1.2018 passed in W.P.No.22895 of 2008 on the file of this court.

WP.No. 22895 of 2008 Prayer: Writ of Certiorarified mandamus to call for the concerned records from the 1st respondent and quash the award dated 24.03.2008 passed by the 1st respondent in I.D.No. 75 of 2006 and consequently substitute the same by direct the 2nd respondent to reinstate the petitioner in service with full backwages continuity of service and all other attendant benefits.

For appellant : Mr.K.Sankaran
For R1 : Mr.Balan Haridas
R2 Tribunal

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant-Bank and Mr.Balan Haridas, learned counsel, who takes notice on

behalf of the first respondent.

2. The writ appeal has been filed challenging the order passed by the learned Single Judge setting aside the punishment of removal from service with superannuation benefits imposed upon the first respondent herein, while leaving it open to the appellant-Bank for imposing a lesser punishment other than removal from service/dismissal from service/compulsory retirement.

3. The factual matrix behind the filing of the writ appeal is as under:-

The first respondent, an employee of the appellant-Bank is said to have given credit of a sum of Rs.25,000/- to the account of one Balasubramanian (A/c.No.1/20) instead of giving credit to the account of Natarajan (A/cNo.9/1605), who is said to have deposited the cheque for the said amount in his favour. While this being the first charge against the first respondent herein, the other charge against him is that he had borrowed some amounts from various customers of the Bank. After enquiry, the first respondent was imposed with a punishment of removal from service with superannuation benefits. The appeal preferred by the employee was dismissed. The Central Government Industrial Tribunal also confirmed the same. In the writ petition, the learned Single Judge, on appreciating the facts and circumstances of the case in the light of catena of decisions of the Apex Court and this High Court, having found that there were some infirmities in the conduct of the enquiry proceedings and the punishment imposed is disproportionate with the delinquency, set aside such punishment and directed the appellant to impose a punishment other than removal or dismissal from service and compulsory retirement, which is under challenge before us at the instance of the appellant-Bank.

4. The gist of the submission made by the learned counsel appearing for the appellant-Bank is as under:-

- i) The learned Single Judge has erred in treating the punishment imposed as removal from service in simpliciter whereas it is removal from service with superannuation benefits.
- ii) The learned Single Judge, while dealing with the proportionality of punishment of removal from service with superannuation benefits as per rules failed to even advert to the counter affidavit filed by the bank wherein the gravity of the misconduct touching integrity, honesty, diligence, absolute devotion, institutional loyalty/integrity and in particular the impairment of the confidence are enumerated.
- iii) The learned Single Judge has failed to note that the first

respondent herein, with intention to liquidate his liability to one Balasubramanian, has made some corrections in the records to give credit of the amount deposited by one Natarajan through a cheque, into the account of Balasubramanian and thereby wantonly defrauded the customer.

iv) The learned Single Judge failed in not considering the evidence viz., the complaint lodged by the customer Natarajan for non-receipt of the amount credited to his account.

He would further submit that review on the ground of proportionality of punishment is permissible under Section 11A of the Industrial Disputes Act only if the punishment imposed is legally unjustified. To substantiate his contention with regard to the gravity of the misconduct, the learned counsel appearing for the appellant would rely upon the decision in *MIHIR KUMAR HAZARA CHOUDHURY v. LIC* ((2017) 9 SCC 404) wherein it has been held that

"26. An employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interest of his employer. He must, therefore, discharge his duties with utmost sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Indeed, good conduct and discipline are inseparable from the functioning of every employee/officer of any institution and more when the institution deals with money of the customers. Any dereliction in discharge of duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on the part of such employee/officer."

In support of his contention with regard to the High Court's power under Articles 226/227 to interfere in identical issues, he also relied upon the decision in *UNION OF INDIA AND OTHERS v. P.GUNASEKARAN* ((2015) 2 SCC 610) wherein it has been held as under:-

"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in

accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

He would contend that punishment of removal from service with superannuation benefits in the fact situation imposed by the disciplinary authority and confirmed by the Tribunal is shown to be a proportionate one and therefore, the High Court shall not go into the proportionality of the punishment imposed, under Articles 226/227 of the Constitution of India.

5. The learned counsel appearing for the first respondent would submit that the learned Single Judge, on finding that the amount involved in the transaction was given wrong credit and thereafter, it was set right by giving proper credit by way of depositing the said amount and the Award passed by the Tribunal does not disclose whether the Tribunal has considered the application of Section 11-A of the Industrial Disputes Act and there is no semblance of such consideration, has shown indulgence to consider the proportionality of punishment as it shocks the judicial conscience and therefore, sought to justify the order passed by the learned Single Judge.

6. Firstly, we do not find any justification in the contention of the appellant that counter version of the Bank has not been considered before going into the issue of proportionality of punishment imposed as the learned Single Judge has considered the case of the employee as well as the Bank in its entirety in the light of various decisions of the Apex Court as well as this Court.

7. With regard to gravity of misconduct and proportionality of punishment, it is pertinent to note that a sum of Rs.25,000/- deposited through a cheque by one customer was given credit to another account holder's account and later, it was re-deposited and therefore, it appears to be a temporary misappropriation. Considering the facts and circumstances of the case and the absence of consideration of section 11-A of the Industrial Disputes Act by the Tribunal, especially, when the Tribunal had initially endorsed the contentions raised by the employee, but, concluded against him on the basis of its own reasoning overlooking its own observations the learned Single Judge, left

with no other option, except to show indulgence in the matter, which cannot be termed as misplaced sympathy or generosity or done in a casual way, but, it is only on considering the fact that there must be a fair play in all administrative decisions, particularly in the matter of imposing punishment, when it takes away the very livelihood of the employees which would have impact not only on the employee but also his family members. In such view of the matter, the learned Single Judge, having found that some infirmities were pointed out in the conduct of the enquiry like non-examination of the crucial witnesses and even non-disclosure of the names from whom the delinquent is said to have borrowed money, also found that there was negligence on the part of the first respondent herein in discharging his duties and therefore, the same would attract some penalty, directed for imposing a lesser punishment, as the punishment imposed was found to be disproportionate with the gravity of the misconduct.

8. With regard to the punishment imposed, it is sought to be contended on behalf of the appellant that it is not removal from service in simpliciter, but, removal from service with superannuation benefits. We are not able to agree with such contention. The learned Single Judge has given a clear finding that the terms "with superannuation benefits" do not have any legal meaning as far as the employee has not qualified for being paid superannuation benefits in terms of the regulations of the Bank. We feel that imposing of such punishment without taking into consideration the implication of such punishment shows non-application of mind on the part of the disciplinary authority, which aspect was not at all considered by the Tribunal whereas the learned Single Judge has dealt with the same in proper perspective.

9. It is also clear that the learned Single Judge, having applied his mind and also giving cautious consideration not to interfere with the punishment by way of misplaced sympathy, but, has directed the appellant to impose any other punishment other than one of compulsory retirement removal or dismissal from service. It is also relevant to note that on referring to the judgment reported in GUJARAT STEEL TUBES LTD. v. GUJARAT STEEL TUBES MAZDOOR SABHA (1981(1) LLJ 137), the learned Single Judge found that in the exceptional circumstances of the case, there is no need to remand the matter to the Tribunal for fresh consideration of the matter under section 11-A of the Industrial Disputes Act with regard to proportionality of punishment and also having taken note of the passage of time that had taken place during the pendency of the litigation before the court, directed the Management to pass order imposing a lesser punishment.

10. Therefore, we do not find any justification to

interfere with the order passed by the learned Single Judge. The writ appeal is dismissed. It appears that the first respondent herein is due for superannuation by 30th April 2018 and therefore, the Management can impose any other punishment as ordered by the learned Single Judge. The respondent would be entitled to all consequential benefits excluding the punishment to be imposed by the Bank exercising its discretion. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

ssk.

To:

1. Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
1st Floor B Wing No.16,
Haddows Road,
Shastri Bhawan, Chennai.

+1cc to Mr.K.Sankaran, Advocate SR.No.27433

+1cc to Mr. Balan Haridas, Advocate SR.No.27599

W.A.No.595 of 2018

RV (CO)
GN (23/04/2018)

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