

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
W.A. No.2504 of 2013

The Deputy General Manager,
State Bank of India, (Region III),
Zonal Office,
No.2, Dr. Ambedkar Road,
Madurai - 625 002.

...Appellant

Vs.

1. Mr.K.Kalirajan,

2. The Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
1st Floor, B Wing, No.26, Haddaws Road,
Chennai - 6.

...Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order of this Court in W.P.No.9165 of 2008 dated 28.09.2012.

Prayer in WP.NO.9165 of 2008: Praying for a writ of certiorari mandamus calling for the concerned records from the 1st respondent quash the award dated 30.11.2007 passed by the 1st respondent in I.D.No. 8 of 2006k in so far as holding that charge No.1 is proved and dismissing the industrial dispute by holding that punishment of dismissal imposed on the petitioner is justified and consequently direct the 2nd respondent to reinstate the petitioner with full backwages continuity of service and all other attendant benefits.

For petitioner : Mr.S.Sethuraman

For Respondents: Mr.Balan Haridoss for R1
R2 - Court

J U D G M E N T

[Judgment of the Court was delivered by P.VELMURUGAN, J.]

The case of the appellant is that the first respondent joined as Clerk-cum-Typist in the Bank on 22.06.1981. He was initially working at Kankalpatty Branch. From August, 1998, he was working in the Sivakasi Branch. Thereafter, he was promoted and transferred to Rajapalayam Branch during May 2001. The allegation against the first respondent was that his wife started a business along with her two brothers and her Aunt. The business was started by them under the name and style of M/S.Venus Fireworks Industry at Panaiadipatty Village near Sivakasi Town. His wife started the business by availing loan from Tamil Nadu Industrial Investment Corporation (TIIC) and

also by availing credit facility from the Sattur Branch of the appellant bank. They also had current account with the Sivakasi Town Branch. The charge memo issued to the first respondent for the alleged misconduct of engaging in trade business outside the scope of service condition by (a) False declaration to the Bank that the employee (first respondent) was not having interest in the business of M/s.Venus Fire Works Industries, which had availed loan from the appellant Bank and also guaranteed the said loan without obtaining prior approval from the appellant-Bank, (b) Engaged in trade and business in the partnership firm, wherein the wife of the first respondent and brothers were partners without obtaining proper permission from the appellant-Bank, (c) Clearing credits meant for other account and diverted it to the current account of M/s.Venus Fire Work Industries Ltd. in connivance with Jayachandra Sivakasi Town Branch to cheat the appellant-Bank, (d) The high value credits were operated through the Savings Bank, which was disproportionate to the known source of income in the appellant-Bank. Thus engaged in the trade and business outside the scope of the duties without the knowledge of the appellant-Bank and (e) Despite having knowledge about the transaction of M/s.Venus Fire Works Industries has not taken steps for regularization of the account.

2. The Enquiry Officer found the first respondent guilty of Charge Nos.1,2,3,5 and Charge No.4 was held to be partly proved. The disciplinary authority concurred with the findings of the Enquiry Officer and imposed punishment of dismissal. Feeling aggrieved with the said punishment of dismissal, the first respondent filed an appeal before the Appellate Authority. The Appellate Authority confirmed the order of the disciplinary authority.

3. Feeling aggrieved with the order of the Appellate Authority the first respondent raised an Industrial Dispute in I.D.No.8 of 2006 before the Industrial Tribunal cum Labour Court, Chennai. After the enquiry, the Industrial Tribunal cum Labour Court, Chennai, confirmed the punishment of dismissal from service imposed by the appellant-Bank.

4. Feeling aggrieved with the order passed by the Tribunal, the first respondent filed a writ petition before this Court in W.P.No.9165 of 2008.

5. The learned Single Judge after hearing both sides, set aside the award passed by the Industrial Tribunal cum Labour Court, Chennai with a direction to reinstate the first respondent and also directed the appellant-Bank to pay 50% backwages for the period from 31.08.2004 till the date of the order.

6. Feeling aggrieved with the order of the learned Single Judge, the appellant-Bank has preferred the present Intra Court Appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

7. The learned Single Judge found that the punishment of dismissal was disproportionate and highly excessive to the

nature of proved charges and therefore he modified the punishment.

8. The learned Single Judge has elaborately gone into the report of the Enquiry Officer, findings given by the disciplinary authority and also the award passed by the Industrial Tribunal cum Labour Court. It is useful to extract the relevant portion of the order of the learned Single Judge, which is as follows:

"25. It has to be noted that the petitioner had worked for more than 15 years. On the five charges levelled against him, 4 material charges found to have been not proved by the CGIT. Therefore, the CGIT ought to have exercised its discretion under Section 11A of the I.D.Act. The workman in his earliest explanation did not deny the charge but as a contrary came up with the plea that he was not aware of the Rules of conduct. Infact Rules of Conduct itself has been marked by the management for the first time by examining M.W.1 and through him Ex.M4 was marked. If the other charges namely that he had actively associated with the business and was having indirect control over the business of his relative has filed to have been proved then the first charge is more of a technical nature. The Rule itself permits guaranteeing in a private capacity for the pecuniary obligations of another person with the prior permission of the appropriate authorities. Therefore, the CGIT was wrong in not exercising its discretion in terms of Section 11A of the I.D.Act to interfere with the penalty of dismissal. Both the disciplinary authority and appellate authority imposed the penalty only on the basis that except Charge No.4 being partly proved, other charges were proved, thought fit to impose the penalty of dismissal. But the CGIT having held charges 2 to 5 were not prove and the first charge alone were proved ought to have considered whether proving of first charge by itself will be considered whether proving of first charge by itself will be enough for imposing the punishment of dismissal. Considering the fact that the workman had no prior record of any misnomer and also the fact that he had worked for more than 15 years, the CGIT ought to have granted relief instead of rejecting the dispute."

9. It is clear from the above materials that during the pendency of Industrial Dispute the first respondent was not working. In the interest of justice and in order to strike a balance, we are inclined to reduce the backwages from 50% to 25%.

10. Accordingly, the appeal is partly allowed. The order of the learned Single Judge regarding reinstatement is confirmed and insofar as the backwage is concerned it is reduced from 50% to 25%.

11. In the result, the intra court writ appeal is party allowed. No Costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rsi/tar

To

The Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
1st Floor, B Wing, No.26, Haddaws Road,
Chennai - 6.

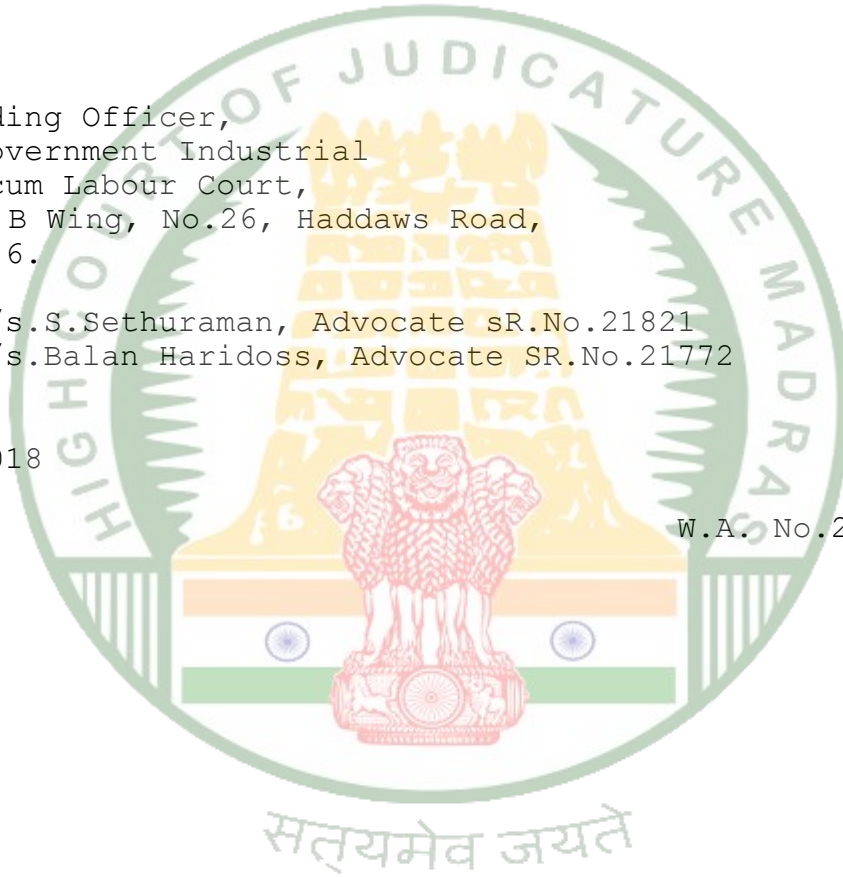
+1cc to M/s.S.Sethuraman, Advocate sR.No.21821

+1cc to M/s.Balan Haridoss, Advocate SR.No.21772

NRI (CO)

sm:11.6.2018

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