

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.34276 of 2006
and M.P. No.1 of 2006

The Regional Manager (Chennai Region),
Vijaya Bank, Regional Office
123, Marshalls Road,
Egmore, Chennai-8.

... Petitioner

Vs.

1.The Deputy General Secretary,
Vijaya Bank Workers' Organisation,
No.60/2, Big Street,
Triplicane, Chennai-2.

2.The Central Government Industrial
Tribunal-cum-Labour Court,
I Floor B Wing 26, Haddows Road,
Sastri Bhavan, Chennai-600 006.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the second respondent in its Award dated 19.01.2006 passed in I.D. No.40 of 2005 and received by the petitioner under cover of the second respondent's letter dated 15.06.2006 and quash the same.

For Petitioner : Mr.Gautam S.Raman for
Mr.C.Seethapathy

For Respondents : Mr.K.M.Ramesh

O R D E R

The petitioner Management has filed this writ petition challenging the Award dated 19.01.2006 passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D. No.40 of 2005.

2.For the sake of convenience, the parties are referred as in the Industrial Dispute:

The case of the petitioner/Management is that One S.Sundarapandian (claimant) was employed as a permanent Subordinate Staff at his Tiruppur Branch on 23.11.1993. While so, the claimant was placed under suspension for the charges viz. misappropriation of an amount of Rs.5,000/- from the S.B. Account of one B.Murugasamy, a customer of the branch by forging his signature on the withdrawal slip on 02.03.2002. The claimant denied the charges levelled against him. However, an enquiry was conducted and he was removed from service by order dated 13.05.2003. Again on 31.01.2003, the enquiry was commenced and the claimant pleaded not guilty and denied the charges. However, the preliminary objections raised were overruled by the Enquiry Officer. The Presenting Officer has produced seven documents which were marked as Exhibits MEX1 to MEX7 and examined three witnesses viz. MW1 to MW3. The Enquiry Officer submitted his findings holding the charges are proved. The claimant submitted his remarks against the enquiry findings. The second show cause notice was issued to the claimant imposing the punishment of removal from service. He submitted his reply to the second show cause notice wherein he specifically sought personal hearing. However, the Disciplinary Authority did not afford the opportunity of personal hearing and passed the final order imposing the punishment of removal from service against the claimant. Aggrieved by the same, he preferred an Appeal before the Appellate Authority, which passed order dated 28.08.2003 rejecting the Appeal. Aggrieved by the said order, the first respondent herein raised an Industrial Dispute before the Central Government Industrial Tribunal-cum-Labour Court, the second respondent herein. Before the second respondent, 19 documents were marked and no oral evidence was adduced on the side of claimant. On the side of the Management, 16 documents were marked and one witness was examined. After considering the materials available on record, the second respondent set aside the order passed by the Disciplinary Authority as well as the Appellate Authority and directed the petitioner to pay half of the back wages and other benefits and as against the same, the petitioner is before this Court.

3.Learned counsel for the petitioner Management would submit that in the preliminary enquiry as well as before the Enquiry Officer, the claimant has admitted the misappropriation of a sum of Rs.5,000/- and also admitted the manipulation of signature of the customer. He would further submit that the second respondent ought not to have directed reinstatement of the claimant and should have confirmed the order passed by the Disciplinary Authority as well as the Appellate Authority which have correctly imposed punishment of removal from service with superannuation benefits. The admission of the guilt letter of the claimant dated 05.06.2002, marked as MEX-6 in the enquiry proceedings is sufficient to establish the charges against the

claimant beyond reasonable doubt. In order to prove the guilt against the claimant, the Management examined the Manager as witness and he clearly deposed with regard to the misappropriation of Rs.5,000/- and manipulation of signature and therefore, the learned counsel for the petitioner prays for allowing the petition.

4. Per contra, learned counsel for the claimant would submit that the claimant was forced to concede the case of the Management and asked for pleading guilty. Before the enquiry officer, the claimant has clearly deposed that he has not misappropriated the fund and not manipulated the signature of the customer. He would further submit that the Disciplinary Authority as well as the Appellate Authority arrived a perverse finding and imposed a major punishment of removal from service. It is relevant to mention that no witness was examined with regard to the manipulation of the signature of the customer and misappropriation of funds and therefore, the second respondent, after examining the witness and considering the documents, has arrived a finding that the claimant is entitled to the relief of reinstatement in service and with regard to the back wages, the second respondent found that there is no evidence to say that the claimant was not in employment during the relevant period and hence, the findings need no interference.

5. Admittedly, the claimant joined the petitioner Bank in the year 1993 and he was placed under suspension for the above said allegation of manipulation of signature of the customer and misappropriation of Rs.5,000/- on behalf of the customer. Though before the Disciplinary Authority, the claimant has conceded his guilt, he denied the entire charges before the second respondent. It is relevant to mention that no independent witness was examined on behalf of the Management in order to prove the guilt against the claimant with regard to the misappropriation and manipulation of the signature of the customer. In this background, it is to be decided as to whether the order of the second respondent can be modified by way of lump sum payment or not. In this context, this Court is fortified by the decision of the Honourable Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Man Singh reported in 2012 (1) Supreme Court Cases 558 held as follows:-

"5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

In the light of the above decision of the Honourable Supreme Court, the impugned

judgment passed by the Labour Court is set aside. We direct the Petitioner management to pay Rs.2 lakhs to the second respondent, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum."

6.In the light of the above decision of the Honourable Supreme Court, I direct the Petitioner management to pay Rs.3,50,000/- lakhs to the claimant, within a period of six weeks from today. In case, the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum."

7.Accordingly, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy General Secretary,
Vijaya Bank Workers' Organisation,
No.60/2, Big Street,
Triplicane, Chennai-2.

2.The Central Government Industrial
Tribunal-cum-Labour Court,
I Floor B Wing 26, Haddows Road,
Sastri Bhavan, Chennai-600 006.

+lcc to Mr.C.Seethapathy, Advocate sr.no.49056
+lcc to Mr.K.M.Ramesh, Advocate sr.no.48353

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and M.P. No.1 of 2006

ssv(co)
nr 11/08/2018