

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.11708 OF 2004

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.41 of 1997 on the file of the 1st respondent, and to quash the award passed therein on 16.10.2002 by holding it as illegal and arbitrary, and consequently, to grant the relief of reinstatement of the petitioner into service with all attendant benefits and backwages.

2. Heard Sri A.K. Jayaprakash Rao, learned Counsel for the petitioner and Sri N. Vijay, learned Counsel for the respondents.

3. The case of the petitioner is that she joined as junior assistant in the 2nd respondent-company on 5.5.1982 and since then, she has been discharging her duties to the best satisfaction of the management. During 1994, she was entrusted with the job of preparation of pay slips and writing of cheques. While so, the 2nd respondent issued a charge memo to the petitioner alleging that while she was discharging her duties in P.F. section, she had indulged in misappropriation of funds and the said conduct was construed as misconduct. After conducting a regular departmental enquiry, the 2nd respondent dismissed the petitioner from service vide order dated 25.3.1997. Challenging the order of dismissal, the

petitioner filed I.D.No.41 of 1997 before the 1st respondent. The 1st respondent-Tribunal adjudicated the preliminary issue as to whether the domestic enquiry conducted against the petitioner was valid or not, and held vide order dated 15.2.2000 that the domestic enquiry conducted against the petitioner was valid. Thereafter, the 1st respondent-Tribunal adjudicated the case on merits and dismissed the I.D. vide order dated 16.10.2002. Challenging the same, the present writ petition is filed.

4. It has been contended by the learned Counsel for the petitioner that no enquiry report was furnished to her before issuing show cause notice and therefore, the domestic enquiry, which was held to be valid, is nonest in the eye of law, and further, during the course of enquiry, only xerox copies of the documents were marked, and no originals were produced before the enquiry officer. He further contends that the petitioner discharged her duties as per the instructions of the Deputy Manager, prepared pay slips and cheques and she has not committed any irregularities. Further, it has been contended by the learned Counsel for the petitioner that dismissal from service is shockingly disproportionate to the charges leveled against the petitioner and therefore, the same may be set aside and the petitioner may be reinstated into service.

5. The learned Counsel appearing for the 2nd respondent contends that the Tribunal has rightly dismissed the I.D. preferred by the petitioner and held that the domestic enquiry conducted against the petitioner was valid. He further contends that the disciplinary authority had taken all the factors into account, and since the charge of misappropriation of funds, which was proved against the petitioner, is serious in nature, the disciplinary authority had rightly imposed punishment of dismissal and therefore, the order of the Tribunal does not warrant any interference.

6. This Court has considered the rival submissions made by the parties and perused the material available on record. From the order impugned, it is obvious that the Tribunal dismissed the I.D. preferred by the petitioner based upon the pleadings as well as merits of the case. While dismissing the I.D., the Tribunal observed as follows:

“During the chief-examination of the workman she stated that she never attached to the PF Section but in her cross-examination by the presenting officer, she has clearly admitted that she was entrusted with PF work from time to time including May, June and July, 1994. She also admitted her hand writing on list/pay sheet which is the basis for preparation of cheques and she has prepared the pay sheet and pay sheet is her own hand writing. When she questioned as to why the employee identity number is tampered ? “ Her answer was no idea”.

7. The main contention of the learned Counsel for the petitioner is that during the course of enquiry, only xerox copies of the documents were marked, and no originals were produced before the enquiry officer and therefore, the enquiry is nonest in the eye of law. In support of his contention, he relied upon the judgment rendered by the Hon'ble Supreme Court reported in **Makhan Singh Vs. Narainpura Co-operative Agricultural Service Society Limited and another¹**. In the said case, the originals were not produced. However a specific plea was taken by the appellant therein that Xerox copies were fabricated one. But in the instant case, no such plea was taken to demonstrate that the xerox copies were fabricated. In the absence of the same, the judgment rendered by the Hon'ble Supreme Court cannot be made applicable to the case of the petitioner.

8. Further, the Tribunal while deciding the preliminary issue as to whether the domestic enquiry conducted against the petitioner is valid, vide its order dated 15.2.2000 has specifically dealt in respect of non-production of original documents during the course of enquiry in the following manner:

“On the other hand, the learned Counsel of the respondent vehemently argued and contended that in the domestic enquiry the originals must not be required since the Evidence Act does not apply, moreover if at all the section 58 of the Evidence Act taken

¹ (1987) 3 SCC 571

into consideration, the admitted facts need not be proved because the delinquent categorically admitted that, with her own handwriting the cheques were issued. If at all the delinquent was interested her counsel or representative must have objected for it, but it was not done. Now in the court the originals have been filed except the original cheques. Moreover, the delinquent and her counsel endorsed on the Xerox copies during the time of domestic enquiry which amounts to acceptance of the Xerox copies.”

9. In view of the above categorical findings of the Tribunal, this Court is of the view that the contention raised by the learned Counsel for the petitioner that the enquiry conducted against the petitioner is nonest in the eye of law due to non-production of original documents before the enquiry officer, cannot be sustained.

10. Having regard to the above circumstances and in view of the nature of the charges proved against the petitioner, this Court is of the view that the Tribunal has rightly dismissed the I.D. preferred by the petitioner. Therefore, this Court is not inclined to interfere with the order of the Tribunal in I.D.No.41 of 1997, dated 16.10.2002.

11. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

12. Today, after pronouncement of the order, the learned Counsel for the petitioner submitted that atleast benefits for the

service rendered by the petitioner prior to her dismissal ought to have been extended to her.

13. Acceding the submission made by the learned Counsel for the petitioner, the respondents are directed to pay the service benefits for the service rendered by the petitioner prior to her dismissal, if not already paid to her, within a period of eight weeks from the date of receipt of a copy of this order.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 10th September, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.11708 OF 2004



10/09/2018

Nn.