

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10711 of 2016

and

W.M.P.Nos.9365 of 2016 & 21309, 21310 of 2017

The Management
Tamil Nadu Mercantile Bank Limited,
Registered Office:57, V.E.Road,
Thoothukudi - 628 002.

...Petitioner

Vs.

1.The Deputy Commissioner of Labour,
(Appellate Authority under TNSE Act),
Salem.

2.P.Sridhar

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Certiorari, calling for the records relating to the Order passed by the first respondent in I.A.No.1 of 2014 in TNSE No.1 of 2009 dated 09.07.2014 and TNSE.No.1 of 2009, dated 26.12.2015 and quash the same.

For Petitioner : Mr.R.Parthiban

For R1 : Mr.J.Ramesh

Additional Government Plader

For R2 : Mr.K.V.Shanmuganathan

ORDER

The writ on hand is filed to quash the orders passed by the first respondent in I.A.No. 1 of 2014 in TNSE.No.1 of 2009 dated 09.07.2014 and TNSE.No.1 of 2009, dated 26.12.2015.

2.The petitioner is the Management,Tamil Nadu Mercantile Bank Limited. The learned counsel appearing for the writ petitioner states that the second respondent was working in Madurai Simmakkal Branch of the petitioner from 10.07.2000 as a peon. His duty as a peon was to do all odd jobs in the Bank and he has no authority to make the entries in the pass books of customer's accounts and also he has no authority to receive any cash from the customers of the Bank. The Second respondent has

committed certain malpractices as detailed in the following manner:

"One Mrs.Thanga Pushpam is having R.D. Account No. 093201650101344 and Kids RD Account No. 093201670100774 with monthly installment of Rs.500/- and Rs.2405/- respectively. On 05.02.2007, the said customer has remitted Rs.500/- and Rs.2405/-in her deposit accounts through her father one Mr.Marimuthu towards installment for the month of February 2007. While making the entries in the pass books, it has been found that the installments for the months of October and November, 2006 totally to the tune of Rs.5810/- were entered manually in the pass book without any remittance made in the computerized deposits accounts concerned.

On enquiry, the customer's father Mr.Marimuthu has informed to the Bank that on 03.10.2006, that he has handed over a sum of Rs.2905/- to the 2nd respondent for remittance of installment in the recurring deposit and Kids recurring deposit account for the month of October 2006. Similarly on 09.11.2006, Mr.Marimuthu has handed over to the second respondent a sum of Rs.2905/- for remittance of installment of the said two accounts for the month of November 2006. The second respondent after receiving the money from Mr.Marimuthu, he made entries in the pass books without remitting the said amounts in the respective accounts and he has retained the money with him and thereby he misappropriated a sum of Rs.5810/-. The second respondent made false entries in the respective passbooks as if the amounts had been credited into the customer's accounts.

When the above incident has been brought to the knowledge of the Bank which is constituted as a serious misconduct in the Memorandum of Settlement between the Bank and the Union, a charge sheet was issued to the second respondent on 15.03.2007. The second respondent denied the charges by giving explanation vide his letter dated 29.03.2007. His explanation was not satisfactory to the petitioner Bank. By abundant caution, the Bank obtained the signature of the second respondent and it was sent to the handwriting expert along with the pass books of the above said customer. After examining the same, the handwriting expert has given her opinion dated 17.12.2007 that manual entries in the pass books were made only by the concerned person Mr.P.Sridhar."

3. With reference to the above allegations, the writ petitioner/Bank has decided to conduct domestic enquiry against the second respondent and the Manager of the Bank appointed an

Enquiry Officer, who inturn conducted an enquiry into the allegations leveled against the second respondent, based on the enquiry conducted, the second respondent was dismissed from services.

4. The learned counsel appearing for the writ petitioner states that the enquiry was conducted in a fair manner and the second respondent was provided with an opportunity to defend his case. The serious allegations of misconduct against the second respondent were proved and based on the proved charges, the penalty of dismissal from service was imposed. The contention of the writ petitioner is that the second respondent had admitted the charges both in his explanation dated 27.05.2018 as well as before the Enquiry Officer. The Enquiry Officer, at the time of asking the Delinquent Official to proceed with the cross-examination by the second respondent, he admitted the fact that he has committed the Act of misappropriation and the deposition of the Management side is true and further said that he was not willing to cross-examine the Management witnesses. The said admission was recorded by the Competent Authority viz., the Deputy Commissioner of Labour.

5. The learned counsel appearing for the writ petitioner reiterated that the second respondent was performing his duties and responsibilities as a peon, had collected money from the customers and misappropriated the same. The said charges were proved and the delinquent official/second respondent admitted the charges also. Under these circumstances, the first respondent ought not to have passed an award granting the benefit. The first respondent authority set aside the order of dismissal issued by the Management in proceedings dated 15.07.2008.

6. The learned counsel appearing on behalf of the respondent contended that the enquiry was conducted in an improper manner. The workman was not permitted to cross examine the witness and no adequate opportunity was given. The learned counsel appearing on behalf of the petitioner cited the judgment of the Hon'ble Supreme Court in the case of United Planters Association of Southern India Vs. K.G.Sangameswaran and Others in C.A.No.1786 of 1997 dated 06.03.1997. The relevant paragraphs of the said judgment are extracted hereunder;

"17.From a perusal of the provisions quoted above, it will be seen that the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the question involved in the appeal is very wide. Even if the evidence is recorded in the domestic enquiry and the order of dismissal is passed

thereafter, it will still be open to the Appellate Authority to record, if need be, such evidence as may be produced by the parties. Conversely, also if the domestic enquiry is ex parte or no evidence was recorded during those proceedings, the Appellate Authority would still be justified in taking additional evidence to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer.

18. to 22.....

23. In view of the above decisions, there remains no doubt that the Appellate Authority has jurisdiction to take evidence at the appellate stage and to come to its own conclusion about the guilt of the delinquent employee."

7. Citing the above judgment, the learned counsel appearing on behalf of the respondent reiterated that the Appellate Authority has jurisdiction to take evidence at the appeal stage and to give its own conclusion about the guilt of the delinquent employee. In the present case on hand, the employer has not given an opportunity to cross examine the witnesses, contrarily, the enquiry proceedings were conducted in a hurried manner. Thus, there is no infirmity in respect of the findings of the award passed in the present case.

8. This apart, the learned counsel appearing on behalf of the respondent relied on clause 12 of the memorandum of settlement dated 26.05.1989. Before imposing the penalty, a personal hearing is contemplated under the terms of the Settlement. However, no such opportunity was extended to the respondent/workman and on that ground also the writ petition is to be rejected.

9. This Court is of the considered opinion that, in the present case on hand, the workman himself admitted the misconduct, he further reiterated by stating that he will not repeat the misconduct again. Thus, there is an admission regarding the charges by the workman concerned. Under these circumstances, these grounds cannot have any force in respect of the grounds raised.

10. The explanation submitted by the Delinquent employee is enclosed in page No.26 of the typed set of papers filed along with the present writ petition. The said explanation reveals that the second respondent/workman was frequently committing

such misconduct of misappropriation and the habit was developed, on account of certain family circumstances. The clear admission made in the explanation by the Delinquent was recorded in the findings of the award passed by the first respondent, wherein, the Delinquent expressed his unwillingness to cross-examine the Management witnesses. Further, he admitted the charges even before the Enquiry Officer.

11. When the charges were admitted by the Delinquent employee, the first respondent came to the conclusion that certain important persons were not examined by the Management and the enquiry was conducted on the same day and concluded hurriedly. The Labour Court proceeded based on certain misplaced sympathy. The findings of the Labour Court reveals that the Delinquent employee has requested to excuse the misconduct. Further, the Delinquent employee made submission that he had committed an Act of misappropriation on account of his family circumstances.

12. On perusal of the findings of the first respondent reveals that the award was passed on misplaced sympathy and considering the submission made by the Delinquent employee that he will not repeat the misconduct again. The finding of the first respondent made that the second respondent has not admitted the charges is contrary to the explanation submitted by the second respondent/employee as well as the deposition made before the Enquiry Officer. Thus, the findings in this regard by the first respondent is perverse and not in consonance with the written explanations submitted by the Delinquent employee as well as the deposition given before the Domestic Enquiry Officer.

13. Under these circumstances, the first respondent has proceeded the issues and recorded that the second respondent/delinquent employee admitted the charges. However, by extending misplaced sympathy, the first respondent set aside the order of removal from service. The final findings of the first respondent in the award is directly in contradiction with the documents submitted by the Management, more specifically, the written explanation of the Delinquent employee as well as the report of the Domestic Enquiry Officer.

14. Under these circumstances, this Court is of the considered opinion that the misconduct of misappropriation of the public money can never be viewed leniently. The writ petitioner/Management is a Commercial Bank and dealing with the money belongs to its customers. Therefore, the Bank being a trustee of these customers is bound to maintain utmost integrity

and honesty in respect of the money collected from the customers. The offence of misappropriation is undoubtedly grave and serious. An employee committed the misconduct of misappropriation cannot be viewed leniently and there is no point in extending the misplaced sympathy by any Authority in this regard. The offence of misappropriation is a serious one affecting the very institutional integrity and therefore, this Court cannot consider the claim of the second respondent/delinquent employee that he has filed a statement before the Authorities that he will not repeat the misconduct again.

15. This being the facts and circumstances of the case, this Court is of the considered opinion that the order passed by the first respondent is perverse and infirm. In respect of the impugned order dated 09.07.2014 passed in I.A.No. 1 of 2014, no orders are required.

16. Accordingly, the award dated 26.12.2015 in TNSC No.1 of 2009 is quashed and the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner of Labour,
(Appellate Authority under TNSE Act),
Salem.

+1cc to Mr.K.V.Shanmuganathan, Advocate sr.88123
+1cc to M/s.R.Parthiban, Advocate sr.87492
+1cc to Government Pleader SR.NO. 87787

W.P.No.10711 of 2016

sj(co)
nr 22/11/2019

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