

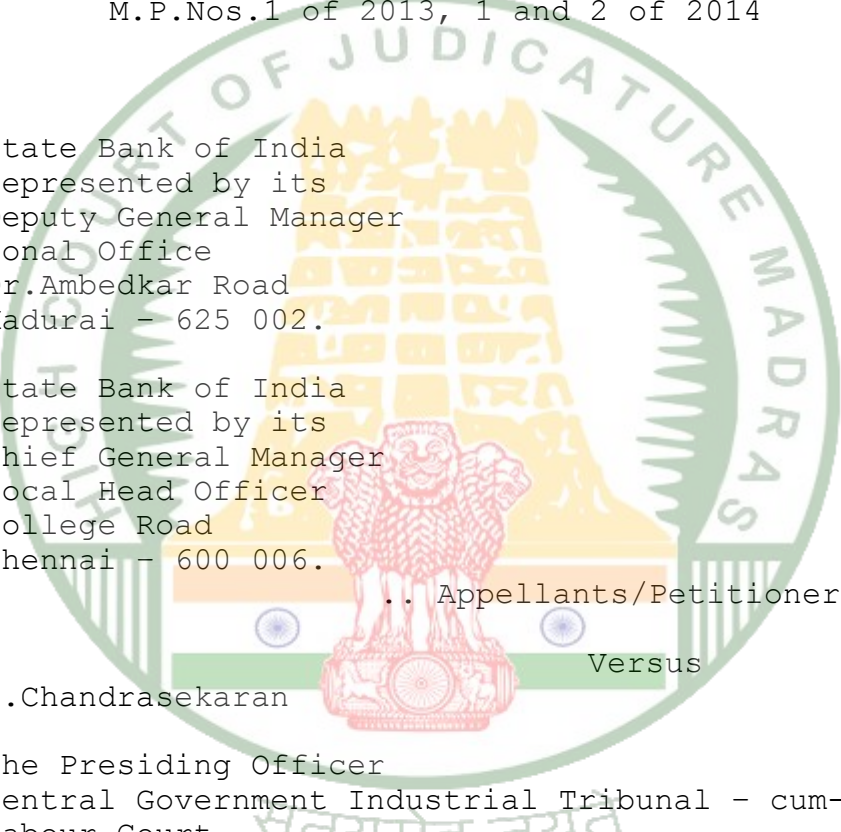
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.2429 of 2013
and
M.P.Nos.1 of 2013, 1 and 2 of 2014

- 
1. State Bank of India
represented by its
Deputy General Manager
Zonal Office
Dr.Ambedkar Road
Madurai - 625 002.
2. State Bank of India
represented by its
Chief General Manager
Local Head Officer
College Road
Chennai - 600 006.
- ... Appellants/Petitioners 2 &3
- Versus
1. S.Chandrasekaran
2. The Presiding Officer
Central Government Industrial Tribunal - cum-
Labour Court
Chennai - 6.

.. Respondents/ Petitioner /1st Respondent

Writ Appeal has been filed under Section 15 of Letters Patent Appeal against the order of this Hon'ble High Court dated 04.10.2013 made in W.P.No.6806 of 2010.

Prayer in W.P.No.6806 of 2010:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorarified Mandamus Calling for the records from the

1st respondent Industrial Tribunal relating to its Award dt.26.6.2009 in I.D.No.17 of 2007 quash the same and consequently direct the 2nd and 3rd respondent Bank to reinstate the petitioner in service with effect from 17.12.2005 with full back wages continuity of service consequential and other attendant benefits.

For Appellants : Mr.S.Sethuraman
For Respondent-1 : Mr.K.M.Ramesh

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN, J.)

This Appeal has been filed against the order of the learned single Judge allowing the Writ Petition filed by the first respondent challenging the award passed by the Industrial Tribunal and setting aside the award of the Industrial Tribunal.

2. The case of the appellants before this Court is that the appellant is the bank and the first respondent, an employee while he was serving in Ramanathapuram Branch of the appellant, a charge memo dated 30.08.2014 was issued against him containing seven charges. Altogether, the main crux of seven charges is based on the allegation of temporary misappropriation of Rs.10,000/- belonging to another customer and held the same for a period, more than two months for special gain. After issuing of charge memo, an enquiry was conducted and the first respondent employee was dismissed from service by the disciplinary authority by order dated 15.05.2005. Subsequently, an appeal was preferred by the first respondent to the appellate authority which came to be rejected by its order dated 30.03.2006, wherein the appellate authority modified the punishment of dismissal from service into removal from service.

3. The first respondent employee initiated proceedings before the Conciliation Officer under the Industrial Disputes Act and thereafter, having failed in the conciliation proceedings, the Government of India, Ministry of Labour, by order dated 18.04.2007 referred the dispute regarding non-employment of the first respondent to the Industrial Tribunal, which later came to be numbered as I.D.No.17/2007. The Industrial Tribunal, before whom the appellant bank and the first respondent employee contested and produced evidences, and after a

detailed enquiry and adjudication, the Tribunal by its order dated 26.06.2009 confirmed the order passed by the appellate authority and sustained the order of removal from service of the first respondent. The award passed by the Industrial Tribunal came to be challenged in W.P.No.6806 of 2010 before the learned single Judge. By order dated 04.12.2013, the learned single Judge had allowed the Writ Petition thereby, quashing the award passed by the Tribunal and had set aside the punishment of removal imposed on the first respondent. The learned single Judge further directed the appellants herein to reinstate the first respondent with 50% backwages with continuity of service and attendant benefits. This order passed by the learned single Judge is under challenge by way of intra court Appeal before us.

4. The learned counsel appearing for the appellant Mr.Sethuraman vehemently contended that the learned single Judge ought not to have appraised the evidence, which is in the form of re-appreciation of evidence and had given a different finding from that of the Tribunal, which is totally incorrect. The learned counsel would also contend that the allegation against the first respondent is grave in nature when the first respondent cannot be found to have inadvertently credited the amount to his account when he knew that the Demand Draft was not sent to him. That apart, the learned counsel has also pointed out that the learned single Judge had failed to appreciate the finding of the Tribunal, wherein the Tribunal has come to a conclusion that the first respondent was acting in clandestine manner regarding the repayment of wrongly credited and misappropriated money, that which, the first respondent did not inform the bank authorities immediately. Based on the same, the Tribunal having come to the conclusion that the first respondent employee had with a bad intention misappropriated Rs.10,000/- of another customer of the appellant bank and the same conclusion cannot be interfered under Article 226 of the Constitution of India by re-appreciating the evidence and that were let in before the Tribunal.

5. The learned counsel for the appellant further contended that the learned single Judge exercising jurisdiction under Article 226 cannot interfere with the award passed by the Tribunal by going into the evidence like an appellate authority, which is not warranted under Article 226. The learned counsel also contended that the factual findings rendered by the Labour Court cannot be interfered under Writ jurisdiction and cannot re-

appreciate the findings of the Labour Court. To substantiate his arguments, the learned counsel also relied upon the judgment of this Court in Francis Vincent Neelankovil ..vs.. Industrial Tribunal in an unreported judgment dated 11.12.2003 in W.A.No.559 of 1999 and the judgment rendered by the Hon'ble Supreme Court in Central Industrial Security Force and others ..vs.. Abrar Ali in C.A.No.2148 of 2015 and prayed for setting aside the order passed in the Writ Petition.

6. This Court, by order dated 02.01.2014 while ordering notice at the time of admission had ordered interim stay of the order passed by the learned single Judge.

7. Per contra, the learned counsel appearing for the respondent Mr.K.M.Ramesh, employee of the appellant bank submits that the first respondent/employee was initially appointed as a messenger in State Bank of India, Muthukulathur Branch on 20.01.1982 and after serving for 10 years, he was promoted as clerk and posted at Ramanathapuram Branch. However, while he was serving at that Branch, on the allegation that he has erroneously credited a Demand Draft of an amount of Rs.10,000/- to his account, he was charge sheeted on 30.08.2004. The learned counsel would further contend that the order passed by the learned single Judge setting aside the award passed by the Tribunal is in order as the learned single Judge has not exceeded his jurisdiction under Article 226 and the order in the Writ Petition is well found and need not be interfered with. The allegation set out in the Appeal by the appellant bank cannot be countenanced by the appellant under any corner of law. The appellant has not made out any valuable, legal grounds for interfering with the learned single Judge's order.

8. In support of his arguments, the learned counsel for the first respondent relied upon the case reported in (1984) 4 SCC 635 (Rajender Kumar Kindra ..vs.. Delhi Administration through Secretary (Labour) and others) and (2001) 1 SCC 65 (Union of India ..vs.. K.A.Kittu and others) to substantiate his arguments that when there are no clear findings based on no evidence and when the Tribunal is duty bound to consider the evidences of all the witnesses examined by the accused and failure to do so, the High Court under Article 226 has got jurisdiction to interfere in such award and set aside the same.

9. Heard both the learned counsels and perused the materials on record.

10. Upon hearing the arguments of the learned counsel for the appellant and first respondent/employee and on reading of all the relevant materials on record, especially the order passed by the learned single Judge in the Writ Petition, it could be seen that while the first respondent employee was in his seat as a single window operator, a cover addressed to S.Chandrasekar, State Bank of India, Ramanathapuram Branch was delivered to him by the courier agent, which is a foreign draft for Rs.10,000/- favouring S.Chandrasekar. As there was no covering letter along with the draft, the first respondent seems to have misunderstood that the demand draft was for him as he has received similar demand draft previously from his relative and deposited the same in his account for encashment. As deposed by the first respondent before the enquiry officer that the first respondent has received foreign remittances on an earlier occasion from his relative Kumaresan previously in 2002 and 2003.

11. The first respondent, misconstruing the demand draft which contains similar name as that of himself instructed one Thiru.R.Palani, a sub-staff who prepared a voucher and arranged to credit the same into the first respondent's account. However, the courier agent, on later date, after verification, found that the courier was dispatched wrongly as the courier agent has received such information from the original addressor. Thereafter, the first respondent informed the same to the Assistant General Manager, State Bank of India, Ramanathapuram with the written statement and he also simultaneously made arrangement to remit back Rs.10,000/- to the correct beneficiary through the courier agent. The first respondent pleaded innocence as it was an unfortunate event, wherein the first respondent misconstrued the demand draft as the same was in similar name and initial as that of himself. However, the appellant bank has initiated disciplinary proceedings which culminated into removal of the respondent from service. Thereafter, the first respondent approached the appellate authority and the appellate authority concurred with the disciplinary authority, which culminated into a Industrial Dispute before the Industrial Tribunal.

12. On perusal of the award passed by the Tribunal, as rightly pointed out by the learned single Judge in his

order, by preliminary order dated 11.01.2008, the Tribunal had set aside the enquiry conducted by the bank and thereafter, the Tribunal permitted the bank to let in evidence to prove the charges. Before the Tribunal, witness Thiru.R.K.Kumaresan and the first respondent himself were examined in favour of the first respondent employee and on the side of the management, the Manager A.Muthukumar was also examined. Before the Tribunal Ex.1 to 13 were marked on behalf of the first respondent employee and Ex.1 to 11 were marked on behalf of the management bank. On a clear perusal of the award passed by the Tribunal, as rightly held by learned single Judge, cross examination of MW.1, which was not at all discussed anywhere by the Tribunal, which is extracted at para-34 and 35 of the learned single Judge's order, which is as hereunder:-

"34. The following evidence of M.W.1 during cross-examination is relevant and it is extracted hereunder:

"Prior to clearing, this instrument will be scrutinised as to the name and the account name. When the old account is keyed, the new account number can be made known if we want it. In Ex.M.3 the account number against payee's name is the old account number. Ex.M4 voucher was passed by S.Munian, Officer. This is the voucher rectified under Ex.M.10. Ex.M4 is a wrong credit voucher. In para-6 of my proof of affidavit, inadvertently credited voucher relates to Ex.M.4"

35. The aforesaid evidence in favour of the petitioner was not considered by the Tribunal. Likewise, M.W.1 also deposed that the petitioner gave a letter Ex.M.7 to the effect that he thought that the draft is pertained to him and the same is sent by his relative. After he came to know that the draft was not meant for him, he asked the courier agent to enquire into and after his enquiry with his relative, he realized that the amount was not meant for him and for that reason, he issued the cheque for Rs.10,000/-. In fact,

the following deposition of M.W.1 during cross-examination is extracted hereunder:

"The employee Chandrasekaran has stated in Ex.M.7 that he thought that the demand draft pertained to him sent by his relative. It is further mentioned that after a few days he came to know that the Demand Draft was not meant for him and therefore he asked the courier to enquire about it and after his enquiry, he realized that the amount was not meant for him and on account of that he issued a cheque for Rs.10000/-."

13. The above evidence is clinchingly in favour of the first respondent employee, which evidence was brushed aside by the Tribunal. The Tribunal has also not taken into account the deposition of MW.1 in total, which is absolutely favouring the first respondent employee. On a conjoint reading of the award passed by the Tribunal and the order passed by the learned single Judge, We are unable to accept the arguments put forth by the appellant's learned counsel that the learned single Judge has wrongly interpreted and interfered with the Tribunal's order. We are also unable to accept the contention raised by the learned counsel for the appellant that the learned single has re-appreciated the evidence before the Tribunal for allowing the Writ Petition thereby, setting aside the award.

14. The interference shown by the learned single Judge is only the evidence that were not taken into consideration by the Tribunal or not discussed by the Tribunal while the Tribunal dismissed the claim petition filed by the first respondent. It is clear from the award that the Tribunal had taken all the depositions against the first respondent and discussed the same elaborately by omitted to even consider the evidence of MW.1, which was in favour of the first respondent. Even the reasons as stated by the Tribunal in its award is not satisfactory for it to confirm the order of removal. Whereas the learned single Judge has not interfered or re-appreciated the findings of the Tribunal but gave emphasis for the deposition of MW.1 Thiru.A.Muthukumar, which was not taken into account by the Tribunal completely. Thus, it is not

a case of re-appreciation of evidence, but a case where the evidence was not considered by the Tribunal, which was taken note of by the learned single Judge. The Tribunal for it to arrive at an award dismissing the Industrial Dispute raised by the employee cannot pick and choose from the deposition to suit its decision and in contrary while deciding an award based on the deposition of a particular witness, the Tribunal is warranted to examine the deposition wholly and not make interference by picking lines in between the deposition. The learned single Judge had relied upon the depositions, which were not considered by the Tribunal for passing the award. Nowhere in the order, the learned single Judge has given any interpretation to the order of the Tribunal nor had substituted his opinion from that of opinion of the Tribunal.

15. In this regard, the judgments relied on by the learned counsel for the appellants are totally on a different footing and on different set of facts and cannot be applied to the case on hand. The Hon'ble Supreme Court in State Bank of Bikaner and Jaipur ..vs.. Nemi Chand Nalwaiya (2011) 4 SCC 584, which was cited in the case reported in Central Industrial Security Force and others . vs. Abrar Ali in Civil Appeal No.2148 of 2015, has indicated the scope of interference of Writ Courts under Article 227 of the Constitution of India against the awards of the Labour Courts/Industrial Tribunals in the following manner:-

"The High Court should not have entered into the arena of facts which tantamounts to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India. In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya reported in (2011) 4 SCC 584, this Court held as follows:

"7.
Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have

arrived at such conclusion or finding, on the material on record.

12. The High Court can only see whether:

(a)

(b)

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d)

(e)

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

13.(i) the finding of fact is based on no evidence."

16. The case in hand is totally different as the learned single Judge in our opinion has not re-appreciated nor acted as an appellate authority and did not interfere with the findings rendered in the award. Whereas the learned single Judge has relied upon those evidences, which were not considered for discussion by the Tribunal for allowing the Writ Petition.

17. In a case reported in (1984) 4 SCC 635 (Rajender Kumar Kindra ..vs.. Delhi Administration through Secretary (Labour) and others), the Hon'ble Supreme Court in paragraphs 16 and 17 held as follows:-

"16. Mr.Jain contended that once Mr.Kakkar came to the conclusion that the appellant was given full opportunity

to participate in the domestic enquiry neither High Court under Art. 226 nor this Court under Art. 136 can sit in appeal over the findings of the enquiry officer and reappraise the evidence. We have not at all attempted to re-appreciate the evidence though in exercise of the jurisdiction conferred by sec. 11-A of the Industrial Disputes Act, 1947 both arbitrator and this court can reappraise the evidence led in the domestic enquiry and satisfy itself whether the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the arbitrator has only the power to decide whether the conclusions reached by the enquiry officer were plausible or deducible from the evidence led in the enquiry and not to re-appreciate the evidence itself and to reach the conclusion whether the misconduct alleged against the workman has been established or not. This court in Workmen of M/s Firestone Tyre Rubber Company of India (P) Ltd. v. Management & Others, held that since the introduction of sec. 11-A in the Industrial Disputes Act, 1947, the Industrial tribunal is now equipped with the powers to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied upon by the employer establishes the misconduct alleged against the workman. It is equally well-settled that the arbitrator appointed under Sec. 10-A is comprehended in sec. 11-A. This court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, held that an arbitrator appointed under sec. 10-A of the Industrial Disputes Act, 1947 is comprehended in sec. 11-A and the arbitral reference apart from sec. 11-A is plenary in scope. Therefore it would be within the jurisdiction both of the arbitrator as well as this court to re-appreciate the evidence though it is not necessary to do so in this case. It is

thus well-settled that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under sec. 10-A or this court in appeal under Art. 136 can reject such findings as perverse. Holding that the findings are perverse does not constitute reappraisal of evidence, though we would have been perfectly justified in exercise of Powers conferred by sec. 11-A to do so.

17. It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind. Viewed from either angle, the conclusion of the enquiry officer as well as of the arbitrator Mr. Kakkar are wholly perverse and hence unsustainable. The High Court, in our opinion, was in clearly error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence."

18. In the judgment reported in (2001) 1 SCC 65 (Union of India ..vs.. K.A.Kittu and others), the Hon'ble Supreme Court in paragraphs 9, 10 has held as follows:-

"9. The Tribunal before proceeding to examine report of the Inquiry Officer rightly took note of the fact that Tribunal cannot review the report of the Inquiry Officer if there are relevant materials on record and the findings of

the Inquiry Officer are based on such material facts. We further find from the impugned judgment that the Tribunal mainly considered the contradictory findings of the Inquiry Officer. Therefore, the submission of the learned senior counsel for the appellant has no force.

10. Regarding charges 1 and 2 the Inquiry Officer held that respondent could not be blamed for collection of premium and patton and for treating Thomas Sebastian and two others as "would-be lessee" but found fault in the action of the delinquent officer in giving sanction as he had no jurisdiction. It was further held that it was motivated and actuated of ulterior motives. According to the Tribunal, the above finding regarding motive was based on no evidence and in this connection, the Tribunal quoted the following observation of the Inquiry Officer namely "unfortunately, there are no evidences to show that his action can be directly relatable to any material gains". We have perused the report of the Inquiry Officer and we find that Tribunal is right in holding that above finding regarding motive is based on no evidence."

19. The above decisions rendered by the Hon'ble Supreme Court squarely applies to the present case in hand, which is in favour of the first respondent.

20. Under these circumstances, We are of the view that the order passed by the learned single Judge has to be sustained and We find no merit in the present Appeal filed by the appellant, which deserves to be dismissed. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

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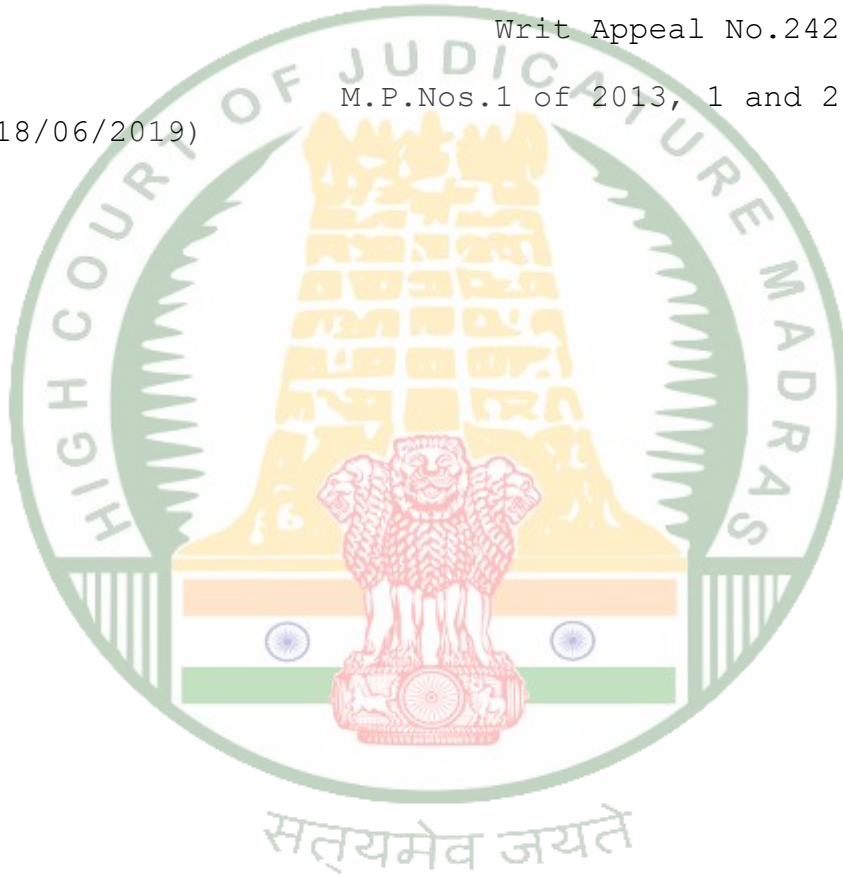
Sub Assistant Registrar

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To

The Presiding Officer
Central Government Industrial Tribunal - cum-
Labour Court
Chennai - 6.

+1cc to Mr.K.M.Ramesh , Advocate SR.No. 41650
+1cc to Mr.S.Sethuraman , Advocate SR.No. 41908

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A.SK(18/06/2019)



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