

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.35958 of 2004
and WPMP.No.43266 of 2004
and WPMP.No.274 of 2009

Central Bank of India,
Regional Office,
Raheja Complex, 3rd Floor,
69, Anna Salai, Chennai -2. ... Petitioner

vs.

1. The Presiding officer,
Central Government Industrial Tribunal,
cum Labour Court, Chennai.

2. E. Kubendran (Deceased)

3. Smt. Amirthavalli

4. Smt. Kalaiselvi

5.K. Rajkumar

... Respondents

(R3 to R5 are legal representatives of Deceased R2, impleaded as per order dated 04.07.2014)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.2 of 2003 and quash its award dated 16.03.2004.

For Petitioner

: Mr.Anand Gopalan
for M/s. T.S.Gopalan & Co.

For Respondents

: R1 - Tribunal

R2 - Died

Mr. K.Ramesh [R3 to R5]

O R D E R

The award dated 16.03.2004 passed in I.D.No.2 of 2003 is under challenge in the present writ petition.

2. The Writ petitioner is the Central Bank of India. The second respondent was employed as Sub Staff in the writ petitioner's bank. The learned counsel for the writ petitioner submits that the practice in the branch in clearing the cheques/instruments, which are received for collection is that the instrument No. and the drawee bank's name or the drawee's account No. are entered in a register called Clearing Register and the cheques are kept in a bag. Before sending the cheques for clearance, a schedule of cheques sent for clearance is typed and sent to the Non-business Office of the petitioner Bank for clearance. After the instruments are cleared, while returning the cheques to the Branch, the Non-business office will prepare a statement showing the Branch Code No. and the cheques, which have been cleared.

3. It is contended that on 08.05.1991, one Prabhuram Trader, which was having a Current Account in the Washermenpet Branch, presented a Demand Draft drawn on Lakshmi Vilas Bank Limited for Rs.9,491.50 for clearing. On 01.04.1991, one Charanya Agencies presented a cheque No.949864 drawn on Indian Overseas Bank, Periyar Nagar Branch for Rs.3,104.70 for clearance. After a few days, the representative of Prabhuram Trader reported that no credit was given for the Demand Draft for Rs.9,491.59. Similarly, Charanya Agencies also complained that no credit was given for Rs.3,104.70. When the matter was probed, it was found that the Demand Draft was not at all entered in the Clearing Register. The party was asked to get a duplicate Demand Draft. However, it was found that the Demand Draft was paid on 13.05.1991. Afterwards, when the Washermenpet Branch compared the clearing schedule maintained in the non-business office with the Clearing Register, it was found that the Demand Draft for Rs.9,491.50 was not included in the Clearing Register, but was typed in the clearing schedule. Similarly, it was in the case of Charanya Agencies also. Subsequently, it came to light that on 28.05.1991, a sum of Rs.12,030/- was withdrawn from the HSS Account No.5553 and it was utilized for purchase of a Demand Draft for Rs.12,000/- in favour of one E.Anandan. The 2nd respondent had encashed the Demand Draft for Rs.12,000/- through Indian Bank, Erukkancheri Branch.

4. It transpired that the 2nd respondent had forged the signature of Mrs.Parvathy, the Account Holder of HSS Account No.5553 in the withdrawal slip dated 28.05.1991. On 03.07.1991, when the second respondent was questioned, he gave a letter

stating that he got a sum of Rs.23,000/- covered by the three instruments tendered by Prabhuram Traders, Charanya Agencies and Selvavinayagar Traders transferred to HSS Account No.5553 of Mrs. Parvathy. He withdrew the amount by forging the signature of Mrs.Parvathy for taking a Demand Draft in the name of E. Anandan, which he had encashed through Erukkanchery Branch of Indian Bank. His wife K.Amirthavalli also signed the letter. The letter was attested by S.Sundararaman, V.Gunasekaran, V. Ramanathan and M.Ramachandran.

5. On enquiry, the writ petitioner Management found that the second respondent misappropriated the funds and accordingly, the disciplinary proceedings were initiated against him. The second respondent gave a reply admitting the guilt on 09.08.1981.

6. In spite of the admission, the writ petitioner Management proceeded with the enquiry and the second respondent was asked to appear in the enquiry proceedings. The enquiry officer conducted the domestic enquiry and submitted his report holding that the charges against the second respondent were established. Accordingly, the second show cause notice was issued proposing the punishment of dismissal and a personal hearing was also granted. Subsequently, the Management issued the order of dismissal dismissing the service of the second respondent on 12.08.1982. The second respondent filed a writ petition in W.P.No. 18140 of 1993 challenging the order of dismissal and subsequently he withdrew the writ petition and raised an Industrial Dispute in I.D.No. 2 of 2003.

7. The Labour Court made a finding that the Domestic enquiry was conducted in a just and proper manner. The document stating that the second respondent admitted the guilt was also recorded by the Labour Court. In spite of the fact that the domestic enquiry was conducted in compliance with the principle of natural justice and the second respondent himself gave a letter admitting the guilt regarding the charges. The Labour Court set aside the order of dismissal and modified the punishment to one that of the compulsory retirement with all benefits.

8. The learned counsel appearing on behalf of the writ petitioner Management reiterated that the letter of the second respondent was marked as Ex.M3, wherein the second respondent in clear terms has stated that due to difficulties in his family and also financial strain, he was not in the proper frame and mind and he expressed that he had done the misappropriation on account of such financial difficulties. It is stated that the second respondent has realised the gravity of the mistake committed by him and made an assurance that he will not commit

the mistake in future. This apart, the amount misappropriated were paid by the second respondent to the writ petitioner bank.

9. The Labour Court in its award, more specifically, in paragraph 10 has stated that " the petitioner has not taken any objection that the confession letter dated 03.07.1991 was obtained by undue influence and coercion. But on the other hand, the second respondent has admitted by way of confession letters in three times. Further, even at the time of personal hearing, the second respondent has accepted the findings of the Enquiry Officer and pleaded only mercy of the Management. Under such circumstances, the Labour Court formed an opinion that the confession letter alleged to have been given by the second respondent is true and voluntary and it cannot be said that it was obtained by undue influence and coercion." After making such a finding in the award, the Labour Court analyzed the nature of the transactions and presumed that such a grave misconduct cannot be possible as far as a sub staff working in bank is concerned.

10. Such a factual inference drawn by the Labour Court is undoubtedly unwarranted. When the facts are admitted by the second respondent himself and the second respondent has not raised any objection with reference to the confession letter given by him on three occasions, there is no reason whatsoever for the Labour Court to draw a factual inference with reference to the nature of the misconduct committed and the manner in which the amount of the Bank was misappropriated. Such a finding is made in the absence of specific pleading or evidence and more specifically, on certain assumptions. Thus, the Labour Court has committed an error in assuming certain facts by drawing a factual inference is not warranted in view of the confession letter given by the second respondent, which was admittedly not obtained by way of coercion or undue influence.

11. Thus, the Labour Court has committed a grave error in arriving a conclusion that the misappropriation by a sub staff bank in a bank is improbable.

12. In respect of the exercise of the discretionary power under Section 11A of the Industrial Disputes Act, it is relevant to cite the judgment of the Supreme Court in the case of LIC Vs. R.Dhandapani [reported in 2006 13 SCC 613] the relevant paragraphs are extracted hereunder:

"7. It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under the said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere

with the decision of the management imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words "disproportionate" or "grossly disproportionate" by itself will not be sufficient.

8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the frame work of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those finds. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

13. In view of the fact that the Labour Court has erroneously inferred the facts which are all not pleaded or established by way of evidence and exercised the discretionary power under Section 11A of the Industrial Disputes Act, this Court is of the opinion that such an exercise of discretionary power is untenable.

14. Under these circumstances, the award of the Labour Court is perverse and accordingly, the award dated 16.03.2004 passed in I.D.No.2 of 2003 is quashed. Accordingly, the writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-)

// True Copy//

Sub Assistant Registrar

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To

The Presiding officer,
Central Government Industrial Tribunal,
cum Labour Court, Chennai.

+1cc to M/s.T.S.Gopalan & Co., Advocate, SR.No.94471.

+1cc to Mr. K.M.Ramesh, Advocate, SR.No.95009.

W.P.No.35958 of 2004
and WPMP.No.43266 of 2004
and WPMP.No.274 of 2009

NMI (CO)
CSR(02/01/2020)



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