

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.2432 of 2012

State Bank of India
Ambedkar Trade Union
Rep. by its General Secretary
Reg. No.2329/MDS
635, Raniammaiyar street
Periyar nagar
Chennai-600 039. ... Petitioner

Vs.

1. Central Government Industrial
Tribunal-cum-Labour Court
I floor, B wing, No.26
Haddows road
Shastri Bhavan, Chennai-600 006.

2. The Chief General Manager
State Bank of India
Local Head Office
Chennai-600 006. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the concerned records from the 1st respondent, quash the award of the 1st respondent in I.D.No.80 of 2009, dated 02.12.2011 as illegal, arbitrary, contrary to law and consequently direct the 2nd respondent bank to pay all the arrears of wages and restore the pay scale of the workman concerned viz., I.Thangavelu and pay full wages and other benefits for the period of suspension.

For Petitioner : Mr.Balan Haridas

For R2 : Mr.R.R.Pradheep for
M/s.S.Sethuraman

O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus calling for the concerned records from the 1st respondent, quash the award of the 1st respondent in I.D.No.80 of 2009, dated 02.12.2011 as illegal, arbitrary, contrary to law and consequently direct the 2nd respondent bank to pay all the arrears of wages, restore the pay scale of the workman concerned viz., I.Thangavelu and pay full wages and other benefits for the period of suspension.

2.The employee Thangavelu joined the bank as a clerk on 20.12.1980 and he is a member of the petitioner Union. While he was working as a clerk in the 2nd respondent bank, he was suspended from service by order dated 21.12.2001. The 2nd respondent issued a charge memo dated 11.02.2004 containing three charges. The employee submitted his explanation denying the charges. The 2nd respondent bank conducted domestic enquiry and the Enquiry Officer gave a report holding that the charges levelled against the employee were proved. The 2nd respondent bank issued a second show cause notice to the employee indicating the proposed punishment. The employee submitted his explanation. The 2nd respondent, who is the Disciplinary Authority by the order dated 29.12.2005 imposed punishment of bringing down to lower stage in the time scale of pay by two stages for 12 years with cumulative effect. The employee Thangavelu filed an appeal and the same was rejected by the Appellate Authority on 31.04.2006. The petitioner Union raised an industrial dispute in I.D.No.80 of 2009. Before the 1st respondent, both the petitioner and 2nd respondent did not let in any oral evidence. The petitioner marked Exs.W1 to W35 and the 2nd respondent marked five documents as Exs.M1 to M5. The 1st respondent considering the pleadings, documentary evidence and arguments advanced by the parties, dismissed the industrial dispute upholding the punishment imposed by the 2nd respondent. Against the said award dated 02.12.2011, the petitioner Union has come out with the present writ petition.

3.The learned counsel appearing for the petitioner contended that the impugned award of the 1st respondent is illegal and contrary to law as the 1st respondent failed to refer the material documents and evidence on record, but extracting the pleadings, concluded the punishment imposed, is correct. The 1st respondent erred in holding that in the conclusion of the Enquiry Officer, there is logically probative materials, when the finding of the Enquiry Officer is not based on any legal evidence. The findings of the Enquiry Officer is based on either hear say witness or based on materials, which were not proved in the manner known to law. The 2nd respondent did not produce the circular dated 05.01.2004 to prove that if there is outside borrowing, permission of the bank has to be obtained. The

petitioner has specifically pleaded that the said circular is not applicable to his case and the 1st respondent in arbitrary manner, held that the petitioner did not produce the circular and contention raised in this regard cannot be considered. The employee did not give any statement in writing admitting the charges. The 1st respondent accepted the statement written by somebody and treated the same as confession statement of the employee. The employee was forced to make payment under threat of police. Mere payment of amount will not amount to admission of misappropriation. The 1st respondent failed to see that it is a case of no evidence. The 1st respondent erred in holding as if there is some circumstantial evidence to prove the charge against the employee and punishment imposed cannot be interfered. As per the settlement of the 2nd respondent bank, the 2nd respondent can impose punishment of bringing down to lower stage in the scale of pay up to a maximum of two stages or increment be stopped with or without cumulative effect. The 2nd respondent has imposed both the punishments on the employee, which is illegal. In view of the clause 6(e) and 6(f) of the memorandum of settlement dated 10.04.2002, the 1st respondent failed to consider the above materials and erroneously upheld the punishment imposed on the employee and prayed for allowing the writ petition. In support of his contentions, the learned counsel relied on the following judgment:

(i) 2012 (5) SCC 242 (Vijay singh v. State of Uttar Pradesh and others;

"11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of the 1991 Rules. Integrity of a person can be withheld for sufficient reasons at the time of filling up the annual confidential report. However, if the statutory rules so prescribe, it can also be withheld as a punishment. The order passed by the disciplinary authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the 1991 Rules, since the same could not be termed as punishment under the Rules. The Rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded."

4. Per contra, the learned counsel appearing for the 2nd respondent contended that the employee committed irregularity and misappropriated the funds of the 2nd respondent bank. When the misappropriation was found out, he confessed the misappropriation committed by him and paid the amounts

misappropriated. The employee voluntarily confessed his guilt and paid the amount. The allegation that under threat of police he paid the amount is denied. The said allegation is only an after thought. The 2nd respondent conducted domestic enquiry in a fair and proper manner following the principles of natural justice. The employee fully participated in the enquiry. The 2nd respondent proved the charges levelled against the employee by adducing oral and documentary evidence based on the enquiry report. The Disciplinary Authority after following the procedure imposed punishment of bringing down to lower stage in the time scale of pay by two stages for 12 years with cumulative effect. It is not correct to say that the employee was imposed two punishments. The Appellate Court after properly considering the materials on record rightly rejected the appeal. The 1st respondent considering all the materials on record upheld the punishment imposed by the 2nd respondent by giving valid reason. There is no perversity in the award of the 1st respondent warranting interference by this Court. The 2nd respondent has taken lenient view and punishment imposed on the employee is not disproportionate to the proven charges and prayed for dismissal of the writ petition. In support of his contentions, the learned counsel relied on the following judgments:

(i) (1999) 8 SCC 90 (R.S.Saini vs. State of Punjab and others);

"16. Before advertent to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

(ii) (1995) 6 SCC 749 (B.C.Chaturvedi v. Union of India and others);

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that

evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718, this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

5. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. The contention of the learned counsel appearing for the petitioner is that the 2nd respondent failed to prove the charges levelled against the employee. In the domestic enquiry, no evidence was produced to prove the charges and the 2nd respondent imposed two punishments contrary to the memorandum of settlement dated 10.04.2002. These contentions are without merits. In a domestic enquiry, strict proof of evidence is not necessary as required in the criminal case. The Enquiry Officer can come to the conclusion based on some evidence and the preponderance of probabilities of the case. If there is some evidence to prove the charges, the Enquiry Officer can hold that the charges levelled against the employee are proved. In the present case, employee himself admitted about the misappropriation and paid the amount. The contention of the learned counsel appearing for the petitioner that employee paid the amount under threat of police is not proved and not acceptable. On the other hand, the employee after giving confession statement and payment of amounts, has not retracted the confession statement and has not sent any letter denying the same that he paid the amount under threat of police. The 1st respondent after considering the confession statement of the employee, has held that the same was voluntary and natural emanating from a man who is really guilty of such misconducts. In view of the statement made therein, the 1st respondent has also held that if there is some evidence before the Enquiry Officer, the finding cannot be interfered and punishment imposed on the employee is not disproportionate to the gravity of the proven charges. The 1st respondent has discretionary power under Section 11A of the Industrial Disputes Act to interfere with the quantum of punishment imposed by the Authority. The Court can exercise the said power, when the punishment imposed is shockingly disproportionate to the proven charges and there was no evidence before the Enquiry Officer. The Court has to exercise the power judicially. In the present case, the 1st respondent has given valid reasons to dismiss the industrial dispute raised by the petitioner. There is no error in the said finding of the 1st respondent warranting interference by this Court. The judgments relied on by the learned counsel

appearing for the 2nd respondent are squarely applicable to the facts of the present case. In view of the same, the judgment relied on by the learned counsel appearing for the petitioner is not applicable to the facts of the present case.

7. In the result, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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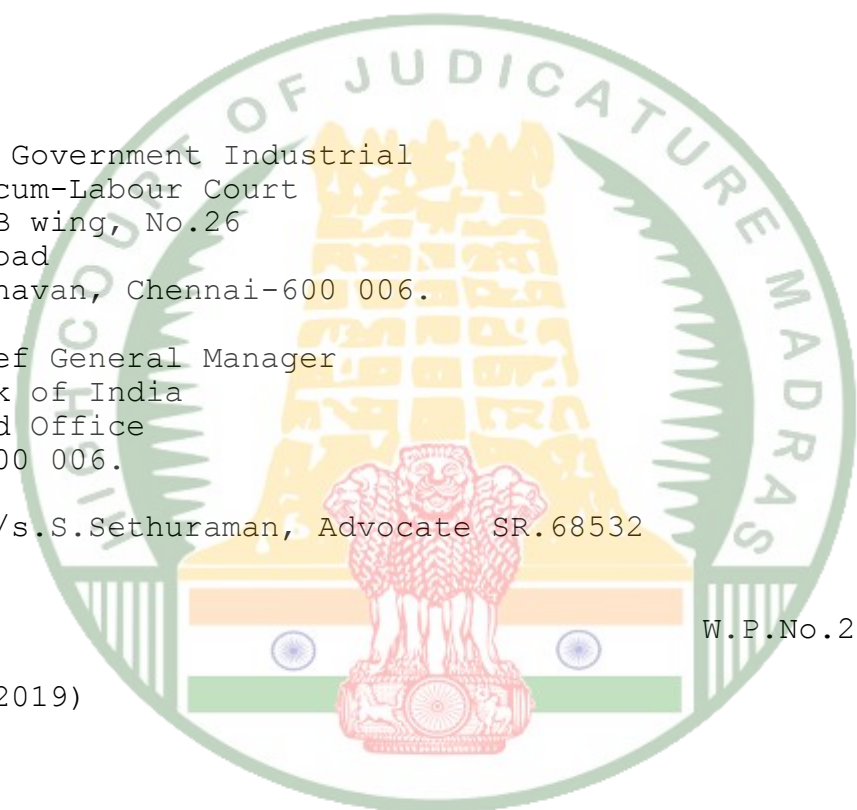
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+1cc to M/s.S.Sethuraman, Advocate SR.68532

MR(CO)
CB(16/10/2019)

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The seal of the Madras High Court is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red and white striped banner with a central wheel. The words 'HONORABLE JUDGES' are written in a semi-circle above the gopuram, and 'MADRAS' is written in a semi-circle below it. At the bottom of the seal, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is inscribed in Devanagari script.

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