

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14-10-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.37774 of 2015 and 4152 of 2016
And

W.M.P.Nos.8445 and 8446 of 2016

State Bank of India,
Represented by its Deputy General
Manager (B&O),
Appellate Authority,
Administrative Unit,
Kurinji Complex,
State Bank Road,
Coimbatore-641 018.

... P-1 in WP 37774/2015
and R-2 in WP 4152 of 2016

State Bank of India,
Represented by its Regional Manager (Region-II),
Disciplinary Authority,
Administrative Unit,
Kurinji Complex,
State Bank Road,
Coimbatore-641 018.

... P-2 in WP 37774/2015
and R-3 in WP 4152 of 2016

D.Suganthi

... Petitioner in WP 4152/2016 and
R-2 in WP 37774/2015

Vs.

The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Chennai-600 006.

.. R-1 in both Wps

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State Bank of India,
Represented by its Deputy General
Manager (B&O),
Appellate Authority,
Administrative Unit,
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.. R-2 in WP 4152/2016
and P-1 in WP 37774/2015

State Bank of India,
Represented by its Regional Manager (Region-II),
Disciplinary Authority,
Administrative Unit,
Kurinji Complex,
State Bank Road,
Coimbatore-641 018.

.. R-3 in WP 4152/2016 and
P-2 in WP 37774/2015

D.Suganthi

.. R-2 in WP 37774/15
and petitioner in WP 4152/16

Writ Petition No.37774 of 2015 is filed under
Article 226 of the Constitution of India praying for issuance of
a Writ of Certiorari, calling for the records of the first
respondent in I.D.No.79 of 2014 and quash its Award dated
30.07.2015.

Writ Petition No.4152 of 2016 is filed under
Article 226 of the Constitution of India praying for issuance of
a Writ of Certiorari, after calling for the concerned records
from the first respondent, quash the Award of the first
respondent Tribunal dated 30.07.2015 in I.D.No.79 of 2014 in so
far as holding that Charge Nos.3 and 5 are proved and giving
liberty to the respondent-Bank to impose the minor penalty in
respect of Charge Nos.3 and 5.

For Petitioners in : Mr.S.Ravindran, Senior
Counsel for
WP 37774/15 and Mr.S.Bazeer Ahamed.
For R-2 & R-3 in
WP 4152/16

For R-1 in both WPs : Tribunal

For R-2 in WP 37774/15
and For petitioner in
WP 4152/16 : Mr.Balan Haridass

C O M M O N O R D E R

The Award dated 30.07.2015 passed by the first respondent in I.D.No.79 of 2014 is under challenge in WP No.37774 of 2015.

2. The facts in nutshell to be considered for the purpose of deciding WP No.37774 of 2015 are that the second respondent was an employee of the writ petitioner-State Bank of India. While she was working as an Assistant in Erode Branch, during the period from 2008 to 2011, was maintaining Savings Bank Account No.30356808102. On 13.02.2012, she was transferred to Udhagamandalam Branch of the State Bank of India. During the Branch Inspection carried out in the year 2012, in Erode Branch, it was found that the monetary transactions in the second respondent's Savings Bank Account were quite abnormal.

3. On verification of the transactions in other Branches, where she worked namely B.P.Agraharam and Erode Branches and deputation at G.H.Road and Arachalur Branches, huge transactions and irregularities committed in the Savings Bank Account of the second respondent were identified.

4. The second respondent had transferred huge sums from the TASMAC account to her account on seven instances. It was found that the second respondent, after having transferred the said amounts, irregularly to her account from the Government Account i.e., TASMAC to her account, had re-transferred the said amounts to the account of M/s.TASMAC, as soon as the same was found. In two instances, where huge sums, which were transferred to the account of the second respondent, was re-transferred to that of the TASMAC after much delay.

5. The second respondent thereby gave wrong credit of the public money in her account that did not belong to the second respondent. Committing such an irregular transfer of public money to her own account in seven instances is beyond reasonable expectations and amounts to misconduct i.e., conduct, which does not commensurate with the responsibility of a Bank employee dealing with public funds. It is also found that the second respondent's account reflected transactions of huge sums of money that was disproportionate to her earnings.

6. A charge sheet was issued to the second respondent on 06.06.2012, framing seven charges, which would amount to major misconduct under clause 5(j) of the

Memorandum of Settlement dated 10.04.2002 namely "doing any act prejudicial to the interest of the Bank, or gross negligence or negligence in work". The details of the charges are enumerated hereunder:-

(i) Charges 1,4,6 & 7 were the details of 55 transactions between 9th May 2008 to 19th April 2011, wherein the second respondent allowed certain third parties to use her Saving Bank Account as the medium for their commercial transactions and her monetary dealing were well beyond her known service of income.

(ii) Charge No.2 dealt with second respondent's conduct of wrongly debiting a school account and crediting a sum of Rs.2,600/- in her account.

(iii) Charge No.3 dealt with 7 instances when the second respondent credited into her account a huge amount which were to be credited to the account of TASMAC.

(iv) The 5th charge dealt with the conduct of the second respondent in unauthorisedly holding Rs.10,000/- in respect of Saving Bank Account of Subramani."

7. In respect of charges 1,4,6 and 7, the second respondent did not deny the transactions as mentioned in the Annexure to the charge sheet. She only stated that the transfer of fund from her account was on behalf of her childhood family friends and for purchase of certain items for her personal use. In respect of huge monetary transactions, which were disproportionate to her known sources of income, she stated that these amounts relate to her savings and her husband's savings and retirement benefits. In respect of second and third charges, she said it was due to oversight. In respect of fifth charge, she said that it was wrongly credited by her and it was rectified later.

8. As the explanation of the second respondent as mentioned in her reply dated 22.06.2012 and 15.03.2012 was not satisfactory, a domestic enquiry was held into the charges. The enquiry was held on 28.08.2012, 25.09.2012, 08.10.2012 and 09.10.2012. The second respondent was represented by a Union member as her defense representative.

9. The Presiding Officer of the Bank filed 86 exhibits marked as PEX 1 to PEX 86. The second respondent's documents were marked as DEX 1 to DEX 3. Since the

transactions mentioned in the charge sheet were matters of record and the records marked as exhibits were proved on the face of it. Moreover, as they marked without any objection from the second respondent, no oral evidence was let in on behalf of the petitioner-Bank. Once the transactions are admitted, burden shifts on the second respondent to prove how the transactions mentioned in charges 1,4, 6 and 7 were genuine and how she was not negligent in carrying out her duties regarding charges 2,3 and 5. The second respondent examined one Mr.Mohammed Mustaffa, who is a trader in ceramic tiles. Mr.Mohammed Mustaffa, admitted that the account of the second respondent was utilised to route various amounts to various people. And that the second respondent had utilised her Savings Bank Account for routing the said transactions including business transactions only at his instance.

10. The second respondent also deposed that she has not committed any misconduct and that the lapse committed by her was trivial in nature and it was due to lack of knowledge. After pursuing the exhibits, oral evidence and the written notes of both the parties, the Enquiry Officer submitted his findings dated 04.12.2012, holding that charges 1,4, 6 and 7 were fully proved, charges 3 and 5 were partly proved and charge 2 was not proved.

11. Findings of the Enquiry Officer was forwarded to the second respondent and a show cause notice was issued to her proposing punishment of "discharge from service with superannuation benefits and without disqualification from future employment". The second respondent was afforded personal hearing on 13.03.2013. The second respondent's contentions were duly considered and thereafter by an order dated 16.03.2013, the second respondent awarded penalty of "discharge from service with superannuation benefits and without disqualification from future employment". The second respondent filed an Appeal, which was also rejected by the Appellate Authority.

12. The second respondent raised an industrial dispute challenging her non-employment and it was adjudicated before the first respondent in I.D. No.79 of 2014. On behalf of the second respondent, it was considered that she was not challenging the validity of the domestic enquiry held against her. On behalf of petitioner, Exhibits M-1 to M-97 were marked by consent and on behalf of the second respondent, Exhibits W-1 to W-16 were marked by consent. The first respondent took up for consideration, the merits of the case, namely, whether the charges levelled against the second respondent was proved and whether the punishment of discharge from service was valid.

13. By an Award dated 30.07.2015, received by the petitioner on 13.10.2015, the first respondent held that charges levelled against the petitioner in S.Nos.1,4,6 and 7 were not proved, that the charges levelled against the petitioner in S.Nos.3 and 5 were duly proved, which would only amount to minor misconduct and that therefore, the discharge of the second respondent was not valid, that she was entitled for reinstatement with back wages, continuity of service and other benefits and that the petitioner was at liberty to impose punishment on the second respondent in respect of charges 3 and 5.

14. The learned Senior Counsel appearing on behalf of the writ petitioner-Bank contended that the Award is erroneous in law and perverse. The well considered findings of the Enquiry Officer in respect of charges 1,4,6 and 7 are set aside, which is untenable. The Labour Court nowhere stated that the findings of the Enquiry Officer is perverse in respect of charges 1,4,6 and 7. In the absence of questioning the findings of the Enquiry Officer, there is no reason to set aside the well considered findings of the Enquiry Officer by the Labour Court and the said portion of the Award is self-contradictory and thus untenable.

15. The conduct of the second respondent in making innumerable commercial transactions by allowing the third party establishments to use her Savings Bank Account as a medium is definitely "an act prejudicial to the interest of the Bank". In terms of Clause 5(j) of the Memorandum of Settlement dated 10.04.2002, the learned Senior Counsel is of an opinion that the same could never be said that misuse of Savings Bank Account by the second respondent employee was in anyway in the interest of the Bank. It is contended that with regard to charges 1,4,6 and 7, the first respondent has held that evidence of Mohammed Mustaffa, a witness examined in the domestic enquiry on behalf of the second respondent was believable, little realising that he was in fact "an interested witness", as he was a party to the commercial transactions carried through the Savings Bank Account of the second respondent and he had moral duty to support the second respondent in this regard.

16. In fact, the evidence of Mohammed Mustaffa would not in any way advance the case of the second respondent to prove that the commercial transactions found in a Savings Bank Account was personal transactions carried out by her. Mohammed Mustaffa did not reveal as to why he carried out his commercial transactions to third party establishments by using the second respondent's Savings Bank Account. It is for the second respondent to prove by tendering her evidence that all the transactions were for her personal use. Obviously, since

she could not say that and hence she did not tender her evidence. This vital point has been completely misused or has been ignored by the first respondent to the benefit of the second respondent.

17. The first respondent was completely wrong in applying the judgment of this Court in the case of Gunasekaran vs. State Bank of India in WP No.13601 of 2014. The facts of the above case have no relevance whatsoever to the facts of WP No.37774 of 2015.

18. The first respondent has wrongly posed the question as to whether any loss was caused to the petitioner on account of the transactions carried out by the second respondent. It has been repeatedly held by the Supreme Court that if an act is prejudiced to the interest of the Bank, the factum of no loss being caused to the Bank in the above scenario would be of no consequence.

19. The first respondent also erred in holding that the petitioner-Bank had not stated as to how the transactions carried by the second respondent was prejudice to the interest of the Bank. The answer is that it is obvious. Misusing the Savings Bank Account repeatedly for unrelated commercial transactions is contrary to Clause 5(j) of Savings Bank Rules and it seriously prejudices the interest of the Bank. The simple but important point has been very lightly dealt with by the first respondent that in no way the transactions carried by the second respondent has caused prejudice to the petitioner-Bank.

20. The first respondent failed to note that the one and the only ingredient to continue in the employment of Bank is absolute devotion to duty and integrity. Any fall in the standards mentioned above would definitely amount to acting prejudiced to the interest of the Bank. The factum of no loss being caused to the Bank is immaterial.

21. In any vent in respect of charges 3 and 5, which were held to be proved by the first respondent would definitely amount to acts prejudiced to the interest of the Bank, which is a major misconduct committed by the second respondent. However, the first respondent has erroneously held that the above proved misconducts were minor in nature in terms of clause 7(c) and (d) of the Memorandum of Settlement dated 10.04.2002. As held by the Supreme Court of India in the case of State Bank of India vs. T.J.Paul [(1999) 2 LLJ 515], gross negligence is a major misconduct involving conduct prejudiced to the interest of the Bank and therefore the first respondent ought not to have held that proved charges 3 and 5 were nearly

minor misconducts warranting minor punishment to the second respondent.

22. The learned counsel, appearing on behalf of the second respondent-employee, strenuously opposed the contentions of the learned counsel appearing on behalf of the writ petitioner-Bank by stating that transacting with the Savings Bank Account by an employee of the State Bank, can never be construed as a misconduct. The Labour Court, in its well considered Award, rightly raised a question on what way such transactions of an employee in her Savings Bank Account caused prejudice to the interest of the Bank.

23. In view of the fact that the employee of the writ petitioner-Bank is also entitled to transact money in her Savings Bank Account as per the general rules applicable to the Savings Bank Account. There is no reason to distinguish Savings Bank Account for the second respondent employee for the purpose of instituting disciplinary proceedings. The transactions of the second respondent in her own Savings Bank Account is completely personal and unconnected with the Bank Funds or had no connection with the duties and responsibilities of the second respondent-employee in her position as an Assistant. Thus, the framing of the charge memo itself is in violation of Clause 5(j) of the Memorandum of Settlement dated 10.04.2002. The Labour Court rightly approached the issues by holding that the memorandum of transactions of the second respondent-employee in her own Savings Bank Account is unconnected with the job responsibilities and therefore, the said transactions did not cause any prejudice to the interest of the Bank.

24. Under these circumstances, the Labour Court arrived a conclusion that the charges 1,4,6 and 7 were not proved and therefore, the punishment imposed is not in proportionate with the nature of the misconduct. Consequently, the punishment of discharge from service with superannuation benefits and without disqualification from future employment on the second respondent was set aside and a direction was issued to reinstate the second respondent in service with back wages and with continuity of service.

25. At the outset, the Labour Court visualised the entire transactions by considering the materials available on record and arrived a conclusion that the private transactions of the employer of the bank in her own Savings Bank Account, cannot be construed as if the same cause prejudice to the interest of the bank and the charges cannot be held to be proved and consequently, the order of penalty was set aside. There is no infirmity, as such, in respect of the Award, the

Labour Court has rightly approached the issues by considering the documents produced by the writ petitioner-management. The findings of the Labour Court reveals that the vital factor regarding the grave misconduct was not established by the writ petitioner-management against the second respondent-employee and thus, the Award is to be confirmed and WP No.37774 of 2015 deserves to be dismissed.

26. In support of the said contention, the learned counsel for the second respondent-employee referred the Memorandum of Settlement dated 10.04.2002 and solicited the contention of this Court regarding Clause 5(j), which stipulates that "doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the bank in serious loss" would come under gross misconduct.

27. Relying on the said clause, the learned counsel for the second respondent-employee reiterated that the Labour Court is rightly came to the conclusion that private transactions of the second respondent in her own Savings Bank Account had not caused any prejudice to the interest of the Bank and further, the writ petitioner-Bank has not established any gross negligence or negligence involving or likely to involve the bank in serious loss. Since the writ petitioner has not established any such grave misconduct, the major penalty imposed is disproportionate to the gravity of the allegations set out in the charge sheet and consequently, the punishment was set aside.

28. The learned counsel for the second respondent-employee further emphasised that the procedure regarding framing of the charge sheet had not been followed. The charge sheet itself is ambiguous, vague and incapable of proceeding with further. In this regard, the learned counsel for the second respondent cited clause 12 of the Memorandum of Settlement, which stipulates the procedure in such cases, Clause 12(a) enumerates that "an employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet, clearly setting forth the circumstances appearing against him and a date shall be fixed for an enquiry, sufficient time being given to him, enabling him to prepare, give explanation and also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Enquiry Office conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence".

29. It is contended that the first charge states that "you (second respondent-employee) had remitted cash as well as effected transfer transactions from

your accounts to third party accounts aggregating Rs.3,87,040/- as detailed in Annexure 'A'".

30. A plain reading of the abovesaid charge clearly portrays that the allegations are vague in nature. The charge memo should contain the details of the allegations. The statement of allegations are imputation of misconducts are not furnished with the charges. Thus, the charge itself is ambiguous and even on that ground, the order of punishment is to be set aside and the same has rightly been set aside by the Labour Court.

31. In support of the contentions, the learned counsel for the second respondent-employee cited a judgment of the Hon'ble Supreme Court of India in the case of Roop Singh Negi vs. Punjab National Bank [(2009) 2 SCC 570], wherein the Hon'ble Supreme Court, in paragraph-14, held as follows:-

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

32. In the case of Syed Yakoob vs. K.S. Radhakrishnan [1964 AIR SC 477], the Constitution Bench of the Supreme Court of India enumerated the legal principles to be followed, while exercising the powers under Article 226 of the Constitution of India by High Courts, while issuing a Writ of Certiorari.

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be

issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within

these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168]."

33. In the case of Surath Chandra Chakrabarty vs. State of West Bengal [1970 (3) SCC 548], the Hon'ble Supreme Court held as follows:-

"6. Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges. Even if the Enquiry Officer had made a report against him the appellant could have been given a further opportunity at the stage of the second show-cause notice to adduce any further evidence if he so desired after he had been given the necessary particulars and material in the form of a statement of allegations which had never been supplied to him before. This could undoubtedly be done in view of the provisions of Article 311(2) of the Constitution as they existed at the material time. The entire proceedings show a complete disregard of Fundamental Rule 55 insofar as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner

of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the Trial Judge was fully justified in decreeing the suit."

34. This Court is of the considered opinion that with regard to the judgments cited, the Supreme Court in *Roop Singh Negi vs. Punjab National Bank* [(2009) 2 SCC 570] (cited supra), held that the Enquiry Officer performs a quasi judicial function. The departmental proceedings are quasi judicial in nature. The Enquiry Officer has a duty to arrive at a finding upon taking into consideration of the materials brought on record by the parties. The principles laid down in this case may not have any direct impact with reference to the facts and circumstances of WP No.37774 of 2015, the fairness or otherwise of the enquiry proceedings are not questioned by the second respondent-employee. Contrarily, the ground raised is that the charges are vague, incapable of proceeding with as well as the Disciplinary Authority has not considered the nature of the transaction and wrongly applied clause 5(j) of the Memorandum of Settlement dated 10.04.2002. Therefore, the facts and circumstances of WP No.37774 of 2015, cannot have direct bearing with reference to the legal principles settled in *Roop Singh Negi vs. Punjab National Bank* [(2009) 2 SCC 570] (cited supra) by the Supreme Court.

35. As far as the Constitution Bench judgment of the Supreme Court of India in the case of *Syed Yakoob* (cited supra), this Court is of an opinion that the principles to be followed and the powers of judicial review of the High Courts under Article 226 of the Constitution of India are well enumerated in many number of judgments by the Supreme Court and even in recent days, the High Courts cannot interfere with the decision abruptly. However, the process through which such a decision is taken and the legality of the same, are to be considered and tested with the settled legal principles. Thus, the power of judicial review test the process through which the decision is taken, is written by the Supreme Court on many occasions. Under these circumstances, all the Courts are bound to follow such settled principles and as far as WP No.37774 of 2015 is concerned, the Constitution Bench judgment is cited for the purpose of reminding this Court regarding certain general principles to be followed while exercising Article 226 of the Constitution of India.

36. As far as the case of Surath Chandra Chakrabarty vs. State of West Bengal [1970 (3) SCC 548] (cited supra), is concerned, the Supreme Court in paragraph-6 held that with reference to the facts and circumstances of that case that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. The Supreme Court considered the facts of the case and arrived a conclusion that the charges were vague. Undoubtedly, the charges, which all are vague, cannot be proceeded with, as such vague charges are incapable of being defended by the delinquent employee. Thus, Courts have held that the charges must be definite and capable of being proceeded with and the employee delinquent must also be in a position to defend his in respect of such allegations, which all are to be specific. There is no clarity in respect of the proposition that the charges must be specific. Thus, this Court is bound to test the nature of charges and ascertain whether such charges are capable of being proceeded with or such charges can be defended by the delinquent employee during the course of enquiry proceedings.

37. Let us now look into the nature of the charges. The charge stipulates that the second respondent-employee had remitted cash as well as effected transfer transactions from her own accounts to third party accounts aggregating Rs.3,87,040/-, as detailed in Annexure 'A'. Annexure 'A' to the charge memo reveals the details of the transactions and the transfer effected from Account No.30356808102 of Smt.D.Suganthi (R-2) maintained at the Branch. The details of the transaction reveal that the date, credited account, name, account maintained at and the amount are clearly stipulated. Therefore, this Court is of an opinion that in respect of those transactions, the second respondent-employee was directed to submit her explanations by the Disciplinary Authority.

38. When the charge memo states that the second respondent has committed certain irregularities by remitting cash as well as effected transfer from her own accounts to third party accounts, as detailed in Annexure 'A'. Annexure 'A' provides the details of the transaction amount transacted and other details, then this Court is of an opinion that the charges are capable of being proceeded with against whom the said charges are incapable of being defended by the delinquent employee. When all such details of the accounts are provided, small question would arise whether the account holder or an employee can provide the details of such transactions. Undoubtedly, such details are sufficient to defend the case of the delinquent employee and she is supposed to clarify the

nature of the transactions, purpose of the transactions, sources of income and other details, enabling the Disciplinary Authority to consider such explanations.

39. Contrarily, relying on the mere charge in isolation with the Annexure provided therein, the second respondent cannot plead that the charges are vague. In respect of certain other charges also, the details are provided in Annexures 'B', 'C' and 'D'. Therefore, the charges are to be read along with the Annexures and considering the nature of the charges as well as the Annexures, this Court is of an opinion that the charges are not vague and certainly capable of being defended.

40. The second respondent-employee, even in her explanations dated 22.06.2012, has not stated that the charges are incapable of being understood or the same is vague. Contrarily, she had submitted her explanations defending her case and lastly she had specifically stated that "above irregularities are committed by my negligence in service due to work pressure and oversight, not with any intention of misuse of public money or bank money".

41. The very language used by the second respondent-employee in her explanation is self-evident that she had realised such transactions are improper and not in consonance with the Bank Rules and Regulations in her capacity as an employee. Even she classified such transactions as irregular and stated that she committed negligence in service due to work pressure and oversight. The very explanation reveals that the second respondent-employee had realised the irregularity committed by her resulting in misconduct and therefore, now the learned counsel for the second respondent-employee cannot plead that the charges are vague or incapable of being proceeded with.

42. With reference to charge Nos.1,4,6 and 7, the Labour Court found that the charges were not established. The correctness or otherwise of such findings are to be considered by this Court in WP No.37774 of 2015, the process through which such a decision was arrived at by the Labour Court that the charges 1,4, 6 and 7 are disproved is also to be scrutinised for the purpose of considering the Award impugned in WP No.37774 of 2015.

43. In short, the second respondent-employee was working as staff in the writ petitioner-Bank. During March 2008 to April 2011, the second respondent allowed her Savings Bank Account to be misused by certain traders. These traders routed their commercial transactions through Savings

Bank Account of the second respondent-employee. Thus, disciplinary proceedings were initiated for the misconduct under clause 5(j) of the Memorandum of Settlement dated 10.04.2002. The credit summation of the second respondent-employee during the year 2008 at Rs.15,64,403/-, during the year 2009 at Rs.11,52,860 and during the year 2010 at Rs.11,91,269/- respectively were disproportionate to her known sources of income. When the sum and substance of the charges 1,4,6 and 7 reveals that the transactions in the Savings Bank Account of the second respondent-employee revealed that her Savings Bank Account was misused for the purpose of certain commercial transactions and further, the quantum of amount transacted revealed that there is a dis-proportionality with reference to the known source of income, the writ petitioner-Bank had initiated disciplinary proceedings.

44. Though the second respondent gave an explanation on 22.06.2012, stating that these transactions were towards the purchases made by her for UPS, tiles and other petty items, neither a single bill was filed nor she gave evidence in the enquiry to substantiate her version, thereby failing to discharge the burden of defense put up by her.

45. In this regard, the judgment of the Hon'ble Supreme Court in the case of Orissa Mining Corporation and Another vs. Ananda Chandra Prusty [(1996) 11 SCC 600] and the relevant paragraph-6 of the judgment cited supra, the Hon'ble Supreme Court reiterated that "on a consideration of the totality of the facts and circumstances of the case including the nature of charges we are not inclined to interfere in the matter. The position with respect to burden of proof is as clarified by us hereinabove viz., that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary enquiry. The burden of proof depends upon the nature of explanation and the nature of charges".

46. In this context, it is relevant to remind the explanation given by the second respondent on 22.06.2012, wherein she herself stated that the irregularities are committed by her on account of negligence in service and due to work pressure and oversight.

47. 86 documents were filed in the domestic enquiry in proof of the charges, which all are not disputed by the second respondent-employee.

48. In respect of the first charge, the defense representative, in his brief, admitted that "the DR has relied on DEX 3, DW-1 and confirmed that the transaction Sl.Nos.11 to 13, 15, 17 to 20, 23 to 28 of Annexure 'A' are the

money received from M/s.Heera Enterprises for their remittances. Mr.Md Mustafa is a proprietor of M/s.Heera Enterprises and is a pensioner and the cash remittance of Rs.2,60,250/- is not her own money. It is the money remitted for somebody else".

49. In respect of fourth charge, the DR relied on DW-1 and stated that "the transaction nos.2 to 8, 11, 14 and 15 of the Annexure are the money received from M/s.Heera Enterprises for their remittances".

50. In respect of sixth charge, the second respondent-employee remitted the following amounts to third parties from her account:-

Date	Name of the Account Holder	Amount transferred (Rs.)
05.01.2011	Somasundaram	4,600/-
02.03.2011	P.Matheswaran	1,40,000/-
09.04.2011	Somasundaram	4,875/-

The DR further stated that "CSE is a member of a 'small chit', which was conducted by Somasundaram. Every month she is making payments to him". However, on 02.03.2011, she made single transaction for Rs.1,40,000/- towards 'small chit'.

51. In respect of seventh charge, which is a summation of huge transactions carried out by the second respondent-employee during the years 2008, 2009 and 2010 leading to inference of the amounts being disproportionate to her income, the D.R. in his brief stated that "P.O. (Presenting Officer) accepted the fact that due to transactions relating to third party accounts and TASMAL account, credit summation of CSE's account has been mounted". The Enquiry Officer, therefore, held that the facts establish that charge sheeted employee has effected the transaction is not her money, which means it is not her known income.

52. As far as the Award of back wages are concerned, the judgment of the Supreme Court in the case of P.Karuppaiah (D) through LRs vs. The General Manager, Thiruvalluvar Transport Corporation Ltd [decided on 12.10.2017 in Civil Appeal No.4160 of 2008], is referred and the relevant paragraphs 11 and 12 are extracted hereunder:-

"11. Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order 4 till the date of his rejoining, he was not gainfully employed anywhere. The employer too has a

right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.

12. On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The Courts have also applied in appropriate cases the principle of "No work-No pay" while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case."

53. In view of the facts and circumstances narrated above, this Court is of the considered opinion that the Labour Court has proceeded on the ground that the charges 1,4,6 and 7 are not misconducts, warranting a major penalty and applying the principles of dis-proportionality, the punishment imposed by the employer was set aside.

54. The meaning of the word 'misconduct' cannot be narrowed down by stating that the money belongs to the writ petitioner-Bank is misappropriated or no prejudice is caused to the writ petitioner-Bank. Causing prejudice to the interest of the employer is one aspect of the matter and the conduct of an employee for the purpose of maintaining the honesty, integrity and decorum of the institution, is another aspect of the matter.

55. The word 'misconduct' is defined as 'improper behaviour', even an adultery abusive language cheating, infidelity, unfaithfulness and so on and so forth. While the meaning can be given in view of the fact that the purpose and the object of dealing with an employee for committing such misconducts are to ensure discipline and integrity of the institution itself. An employee cannot take a shelter by stating that his/her transactions or personal behaviour conducted in the public domain, would not cause any prejudice to the interest of the employer or the institution. If such a stand is accepted, then the very institutional integrity will collapse and the purpose and the object of the disciplinary proceedings on certain misconducts will also to be misinterpreted on many occasions.

56. Let us take an example, if any employee misbehaved with the public in a common place or shouted or involved in some monetary transactions, resulted in cheating or committed certain offences outside the work place or in personal life, then a stand will be taken that such misconducts or offences are not causing any prejudice to the interest of the establishments/institutions and therefore, the same cannot be construed as a misconduct, warranting a disciplinary action under the Service Rules.

57. The employees are always expected to maintain good conduct, both inside the office and outside the office. Maintaining good conduct is a precondition for employment. Verification of antecedents and character were also undertaken by the employer, while appointing the persons. This being the overall assessment to be made by an employer for the purpose of maintaining discipline, decorum and integrity of the institution, the Courts cannot say that such all are the misconducts, which all are not having any direct implications with reference to the duties and the responsibilities, cannot be construed as misconducts and all those conducts are to be deleted from the list of misconducts. Such an idea will defeat the very concept of discipline, decorum and integrity. Even Article 51-A of the Constitution of India speaks about the duties of the citizen. While enumerating the duties of the citizen, the Constitution of India emphasises that "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement" Clause (j) of Article 51-A of the Constitution of India says so. Thus, the strive towards excellence can be achieved only if the individuals mould their character and maintain good conduct all the times.

58. The duties towards the fellow citizens are also enumerated under the Constitution of India. Clause (c) to Article 51-A stipulates that "to uphold and protect the sovereignty, unity and integrity of India". The integrity of India can be maintained only if the integrity of institutions are maintained. Only if the institutions are capable of maintaining discipline, decorum and integrity, then alone sovereignty and integrity of India can be protected and the democratic principles can be flourished. Thus certain transactions, which all are otherwise irregular or not in consonance with the established good conduct, then all such irregularities are misconducts or negligence and to be construed

as misconducts for the purpose of initiating disciplinary action. Even moral turpitude is a ground for initiation of disciplinary action. That does not mean in small offences like traffic violations or similar nature of cases, can be brought under the disciplinary proceedings. Thus, the employer has to consider the seriousness of the allegations, which results in serious misconduct or affecting the very conduct of the employee.

59. However in WP No.37774 of 2015, the second respondent-employee mis-utilised the Savings Banks Account as an employee in the State Bank of India, where she is working and such irregularity in unusual and unaccepted transactions cannot be a ground to grant exoneration from the departmental disciplinary proceedings. The nature of transactions, the purpose and its dis-proportionality regarding the quantum of monetary transactions, all are a definite concern of the employer and therefore, such financial transactions are grave misconduct, warranting action and therefore, the Award of the Labour Court is perverse and not in consonance with the established legal principles in the matter of disciplinary proceedings.

60. The Punishment of "discharge from service with superannuation benefits and without disqualification from after the employment" was granted. Such a punishment cannot be construed as dis-proportionate to the gravity of the proved charges. The second respondent-employee is entitled to get the superannuation benefits, however, she was discharged from service. Under these circumstances, this Court is of the considered opinion that the punishment is appropriate and very much in commensuration with the proved charges and there is no infirmity in respect of the punishment imposed by the employer.

61. This being the factum, this Court has no hesitation in coming to the conclusion that the Award of the Labour Court is perverse and not in consonance with the established principles and consequently, the Award dated 30.07.2015 passed by the first respondent-Tribunal in I.D.No.79 of 2014 is quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

62. In view of the elaborate discussions made in respect of all the charges and other issues and grounds

raised, no further adjudication is required in respect of the grounds raised in WP No.4152 of 2016 and accordingly, WP No.4152 of 2016 stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Chennai-600 006.

2.Deputy General Manager (B&O),
State Bank of India,
Appellate Authority,
Administrative Unit,
Kurinji Complex,
State Bank Road,
Coimbatore-641 018.

3.Regional Manager (Region-II),
State Bank of India,
Disciplinary Authority,
Administrative Unit,
Kurinji Complex,
State Bank Road,
Coimbatore-641 018.

+1cc to Mr.S.Bazeer Ahamed, Advocate Sr.85954

+2cc to Mr.Balan Haridas, Advocate Sr.85799, 85800

W.P.Nos.37774 of 2015 and 4152 of 2016

svI[co]
srg 19/11/2019

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