

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

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

W.P.No.21794 of 2017

N.Mohandoss

..Petitioner

vs

- 1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
No.26, Haddows Road,
Shastri Bhavan
Chennai - 600 006
- 2.Deputy General Manager,
State Bank of India,
Chennai Zone, Chennai Network I
No.86, Rajaji Salai,
Chennai - 600 001
- 3.The Regional Manager (Region V)
Disciplinary Authority, State Bank of India
Regional Business Office-5, Zone I,
No.15, 1st Floor, Officer Lane,
Vellore - 632 001

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the 1st respondent, quash the Award passed by the 1st Respondent Labour Court in I.D.No.95 of 2015 dated 04.10.2016 as illegal, arbitrary and contrary to law and consequently direct the Respondent Bank to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits or in the alternative to pay pension from the date of discharge dated 25.03.2014 with arrears of pension and pensionary benefits, pass such other orders or directions as this Hon'ble Court may deem fit in the circumstances of the case, award cost and render justice.

For Petitioner : Mr.Balan Haridas

For Respondents: R1 - Tribunal

R2&R3- Mr.S.Ravindran, Senior counsel
For Mr.S.Bazeer Ahamed

O R D E R

The Award dated 04.10.2016 passed by the 1st respondent in I.D.No.95 of 2015 is under challenge in the present writ petition.

2. The writ petitioner states that he is an Ex-Serviceman and after rendering service with the Indian Army, he joined the services of the State Bank of India as an Armed Guard on 19.08.1994. The petitioner was working as a Watchman in the Gajalnaickenpatti Branch. A charge memo was issued to the writ petitioner in proceedings dated 15.06.1999. Two charges were framed against the writ petitioner, alleging that he collected a sum of Rs.3,400/- (Rupees Three Thousand and Four Hundred only) during 1996-1998 from one Mr.M.Jayapal for credit to his children's Recurring Deposit amount and misappropriated the said amount by cheating the Bank customer. The 2nd charge is with regard to six incidents of outside borrowing without approval from the appropriate authority. An enquiry was conducted. The petitioner states that a letter was obtained from him as if he had admitted the charges. Thereafter, he was transferred to Harur Branch. The Domestic Enquiry was conducted and the petitioner, even in his affidavit, has stated that he gave a letter as if he has admitted the charges. Since, he was transferred, he could not able to travel and participate in the enquiry and based on his request, the 1st enquiry was not conducted and a fresh enquiry was commenced. The Enquiry officer held that the first charge is not proved and in respect of the six incidents of outside borrowing, the five incidents has not been proved and one incident is proved. The 3rd respondent Disciplinary Authority disagreed with the findings of the Enquiry officer and proposed the punishment of discharge from service in letter dated 21.11.2000. Consequently, the punishment of discharge from service was imposed in order dated 17.03.2001 and the said order was confirmed by the 2nd respondent Appellate Authority on 15.06.2001.

3. The petitioner filed W.P.No.23258 of 2001, challenging the punishment and the said writ petition was dismissed by an order dated 16.07.2010. He preferred writ appeal in W.A.No.1699 of 2010 and the writ appeal was allowed by an order dated

23.12.2011. The order dated 17.03.2001, imposing the punishment of discharge and the order of the Appellate Authority dated 15.06.2001 were set aside and the matter was remitted back to the 3rd respondent disciplinary authority for fresh consideration. The Hon'ble Division Bench of this Court held that it is left open to the disciplinary authority to commence the proceedings from the stage of issuance of fresh show cause notice, indicating his tentative disagreement with the findings recorded by the Enquiry officer.

4. Thereafter, the 3rd respondent / Disciplinary Authority gave his tentative dissent note dated 29.06.2012, stating that they are disagreed with the findings of the Enquiry Officer in respect of Charge No.1. As far as the Charge No.2, the disciplinary authority had agreed with the Enquiry Officer's finding in respect of borrowing with one Seviappan and held that the charge of outside borrowing has been proved. The 3rd respondent Disciplinary authority held that Exhibit PEx.1 to PEx.4 clearly indicates that the misappropriation of Rs.3,400/- by the writ petitioner. This apart, the petitioner himself admitted the misappropriation received from Mr.Jayapal and he gave a letter to that effect. The petitioner further stated that in his defense statement, he has mentioned that Mr.Jayapal had received a sum of Rs.3,400/- from the writ petitioner. Therefore, he states that he has not misappropriated the amount.

5. The petitioner, at the outset, states that Ex.W6 is an admission letter, admitting the charges by the petitioner was given on compulsion and therefore, the said document cannot be relied upon for the purpose of imposing the penalty. The writ petitioner further states that there is no evidence to establish that the said admission letter was returned by the writ petitioner in his hand. The said letter of admission was obtained during the 1st enquiry and the said enquiry has already been scrapped.

6. The learned Senior counsel appearing on behalf of the respondent Bank disputed the contentions raised on behalf of the writ petitioner by stating that the petitioner was working as an Armed Guard. During the year 1998, he was transferred to Harur Branch. On account of certain grave misconducts committed by the writ petitioner, which came to light, a charge sheet was issued with reference to the allegations of misappropriation of Rs.3,400/- belongs to one Mr.M.Jayapal. The Domestic Enquiry was held on 25.10.1999, the petitioner submitted a letter dated 25.10.1999, regretting for the misconducts committed by him and pleaded the respondent Bank to take a lenient view of the matter. Based on the above version of the petitioner, the

Enquiry officer submitted his findings, holding that the petitioner was guilty of charges levelled against him. The disciplinary authority took the view mainly on the basis of confession of the petitioner and ordered for de novo enquiry. The enquiry was held on 22.10.99, 12.1.2000, 3.2.2000, 20.07.2000 and 1.8.2000. The petitioner was represented by a very learned representative. In his written submissions dated 03.10.2000, it was stated as follows:

"Further, Mr.Jayapal(PW1) children's RD accounts have been closed and settled on 18.06.98 and Mr.Jayapal has admitted and accepted that he has received money Rs.3,400/- from Sri Mohandass(CE)"

7. Exhibits PEx.1 to PEx.4 were marked in proof of charges levelled against the petitioner namely the petitioner's two letters dated 30.4.98 and two letters of Mr.Jayapal dated 9.6.90 and 20.8.99. The petitioner had no plea to make against these four documents. Nor he would come forward to explain the documents are untrue and not binding on him. Contrarily, he admitted the guilt and accordingly, the authority came to a conclusion that the charges were proved against the writ petitioner. After duly considering all the materials available on record as well as the documents and the findings of the enquiry report, the disciplinary authority imposed punishment of "Discharged from service with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment". The appeal submitted by the writ petitioner was also rejected.

8. The petitioner raised an dispute in I.D.No.95 of 2015.

9. The learned Senior counsel contended that the petitioner did not question the validity of the Domestic Enquiry held against him. Exhibits W1 to W28 and Exhibit M1 were marked by consent. No oral evidence was let in on both sides. Exhibits W1 and W2 were petitioner's letter to repay him a sum of Rs.3,400/-, which was given to the petitioner to deposit in RD account of children of Mr.M.Jayapal. Exhibits W3 and W4 were letter sent by Mr.M.Jayapal to Branch Manager of the Bank complaining about misappropriation committed by the petitioner. Exhibit W6 is petitioner's letter dated 25.10.1999 by way of explanation to the charge sheet dated 15.06.1999, which was filed during the enquiry held on 25.10.1999. In the said letter by petitioner, admitted that utilized the amount given to him by Mr.M.Jayapal for crediting in RD account and that he would repay the said amount in two months' time. It is pertinent to note that neither in the domestic enquiry nor before the 1st respondent, the petitioner came forward to give evidence as to

how he was not guilty of the charges levelled against him in spite of Exhibits W1 to W4 and W6.

10. In the written brief, again it is reiterated in Exhibit W12, namely the defense brief dated 28.11.2000 as follows:

"Moreover, the charge-sheeted employee has settled the amount Rs.3,400/- to Mr.Jayapal, PW1, who has not appeared before the enquiry as prosecution witness and Mr.Jayapal also has given Letter dated 02.08.1999, stating that no more charge-sheeted employee has settled everything and telling no more balance to be settled.

On appreciation of evidence place before it the 1st respondent referred to Exhibits W6, W9, W12, W21 and claim statement, the 1st respondent held that "thus it could be seen that after Exhibit W6 letter was given in 1999, until 2014, there was never a case for the petitioner that it is not one given by him or that it was one obtained by coercion or even that it was a misguided one. Even now the petitioner does not have a case that he has not given this explanation. He does not have a specific case also that it was obtained by coercion, undue influence or any foul means."

11. The learned Senior counsel is of an opinion that the delinquent / petitioner himself admitted the charges of misappropriation and given a letter to that effect. Even, in the written brief submitted by the writ petitioner, it is categorically admitted that he has given such a letter and therefore, there is no iota of doubt regarding the admission made by the writ petitioner regarding the charges of misappropriation.

12. The Labour Court also relied on the admission made by the writ petitioner and categorically found that the charge of misappropriation was proved against the writ petitioner. In paragraph 25 of the Award, the Labour Court made a finding that it is an admission made by the petitioner in the proceedings initiated against him. A charge memo was issued to him and he has owned charges and admitted the charges in the explanation. It is just like the defendant in a civil case has admitted the averments in the plaint in the Claim statement submitted by him in a Court. It is part of the proceedings. The Labour Court further found that even if the punishment is sustained, he should be able to receive superannuation benefits as the punishment imposed on the petitioner is discharged from service with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment. Thus,

the punishment cannot be said to be so harsh.

13. Considering all these factors, the Labour Court arrived at a conclusion that the petitioner could not be deemed to have worked or to have been in service during the period in which he actually was not. Thus, he would become eligible for superannuation benefits only, if he was entitled to as per the Bipartite Settlement. So, the petitioner is not entitled to any relief.

14. Careful perusal of the entire grounds as well as the findings of the Labour Court, this Court of the considered opinion that there is no perversity or infirmity. The Labour Court, in clear terms, held that the writ petitioner admitted the charges of misappropriation and it is not on one occasion and the said admission was made on multiple occasions and there is no ambiguity in respect of such admission. Accordingly, the disciplinary authority proceeded with the disciplinary proceedings and decided to impose the punishment of discharge from service with superannuation benefits.

15. Thus, this Court is of an opinion that such a punishment cannot be construed as harsh in respect of allegations of misappropriation proved against the writ petitioner and there is no other acceptable ground for the purpose of interfering with the Award of the Labour Court. Consequently, the Award dated 04.10.2016 passed in I.D.No.95 of 2015 is confirmed and the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

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To

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

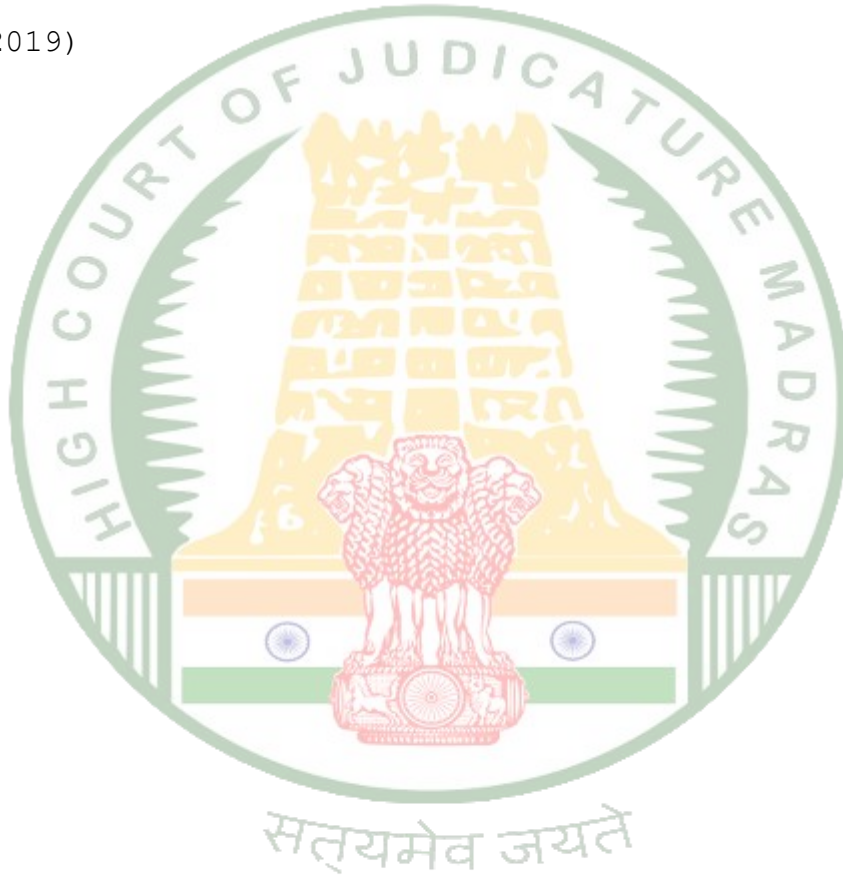
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Regional Business Office-5, Zone I,
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+1cc to Mr.S.Bazeer Ahamed, Advocate SR.85955
+1cc to M/s.Balan Haridas, Advocate SR.85798 (28/11/19)

W.P.No.21794 of 2017

BS (CO)
CB (15/11/2019)



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