IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19662 of 2006
and M.P. No.2 of 2006

K.Krishnavalli ... Petitioner

-vs-

1.The Managing Director,
Tamil Nadu Industrial Investment
Corporation Ltd.,
No.692, Anna Salai,
Nandanam,
Chennai-35.

2.The Board of Directors,
rep. by the Chairperson,
Tamil Nadu Industrial Investment
Corporation Ltd.,
No.692, Anna Salai,
Nandanam,
Chennai-35. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus to quash the order of the first respondent herein viz. the Managing Director of the Tamil Nadu Industrial Investment Corporation Limited, Chennai-35 in Proceedings No.Admn/DW/2005-2006 dated 28.10.2005 compulsorily retiring the petitioner from the petitioner's service as the Senior Assistant of the Corporation and the order passed in Appeal by the second respondent herein viz. The Board of Directors represented by the Tamil Nadu Industrial Investment Corporation Limited, Chennai-35 dismissing the petitioner's appeal, thereby confirming the order of compulsory retirement passed by the first respondent against the petitioner and for a consequential back wages and continuity of service.

For Petitioner : Mr.M.Shreedhar

For Respondents: Mr.M.R.Raghavan

ORDER

The petitioner has come to this Court challenging the Proceedings No.Admn/DW/2005-2006 dated 28.10.2005 issued by the first respondent compulsorily retiring her from service as the Senior Assistant of the Corporation and the order passed in Appeal by the second respondent herein viz. The Board of Directors represented by the Tamil Nadu Industrial Investment Corporation Limited, Chennai-35 dismissing her Appeal, thereby confirming the order of compulsory retirement passed by the first respondent and seeking a direction to the respondents to re-instate her in service with back wages.

2.Learned counsel appearing for the petitioner would submit that the petitioner was appointed as Assistant cum Typist pursuant to the Proceedings of the Selection Committee of the said Tamil Nadu Industrial Investment Corporation Limited (hereinafter referred to as 'the Corporation') and by virtue of letter dated 29.03.1990. Subsequently, she was promoted as Senior Assistant and she served in various branch offices of the Corporation. While so, when she was working as Senior Assistant in the Kancheepuram Branch, she was issued with a Charge Memo dated 02.12.2002 by the first respondent for the following charges:

> 'Charge 1:That she had drawn the advance amount of Rs.6000/- on 15.5.98 for purchase of computer stationery and did not utilise the same for the purpose for which it was obtained and thereby temporarily misappropriated the funds of the Corporation and also failed to maintain absolute integrity and devotion to duty and thereby violated Rules 6.14(vii), 6.14(viii), 6.14(xii) and 6.1(a), 6.1 (b) read with 6.14(xiii) of the service Rules of the Corporation.
>
> Charge 2:That she failed to obtain stamped receipt for Rs.5,000/- from the supplier, M/s.Ahana Computers and made the payment in cash to the supplier against norms and thereby violated Rules 6.14(vii), 6.14(viii), 6.14 (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the service Rules of the Corporation.
>
> Charge 3:That her conduct as above is unbecoming of an employee of a Financial Corporation and thereby violated Rule 6.1(c) read with 6.14(xiii) of the Service Rules of the Corporation.'

On the very same day, another charge memo was issued by the first respondent for the following charges:

'Charge 1:That she manipulated the attendance register and signed in the place for 2/9/98, 3/9/98, 4/9/98, 7/9/98 and 8/9/98 as if she had attended the office in time on those days and thereby violated Rule 6.14 (vii), 6.14(viii), 6.14(xii) and 6.1(a) read with 6.14 (xiii) of the service Rules of the Corporation.

Charge 2:That she manipulated the attendance register and signed the attendance register as if she attended the office on 5/6/98, 6/7/98, 9/7/98, 9/9/98 and 15/9/98 when she had not attended the office on those days and thereby violated Rules 6.14(vii), 6.15(viii), 6.14(xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the service Rules of the Corporation.

Charge 3:That she intentionally and with ulterior motive committed the above irregularities and her conduct is unbecoming of an employee of a financial institution and thereby, violated Rules 6.4(c) read with 6.14(xiii) of the service Rules of the Corporation.'

3.Learned counsel appearing for the petitioner would further submit that in reply to the above said charge memos, the petitioner has submitted her explanation on 28.01.2003 denying the charges and praying to drop the charges levelled against her. The Disciplinary Authority, disagreeing with the explanations offered by the petitioner, appointed an Enquiry Officer, who has submitted his report dated 07.04.2004 in favour of the petitioner holding that the charges were not proved. The Disciplinary Authority, on receipt of the report of the Enquiry Officer, disagreeing with the same, called for explanations as to why the report of the enquiry officer should not be deviated.

4.With regard to Charge No.1 namely, that the petitioner had drawn the advance amount of Rs.6000/- on 15.5.98 for purchase of computer stationery and did not utilise the same for the purpose for which it was obtained and thereby temporarily misappropriated the funds of the Corporation and also failed to maintain absolute integrity and devotion to duty, the Disciplinary Authority has assigned reason for deviating from the report holding that the petitioner had drawn an advance amount of Rs.6,000/- on 15.05.1998 for purchase of Computer Stationery and did not utilise the same for the purpose for which it was obtained and thereby, temporarily misappropriated the funds of the Corporation and also failed to maintain absolute integrity and devotion of duty and thereby, violated 6.14(vii), 6.14(viii), 6.14(xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation. The Disciplinary Authority has further stated that the findings of the Enquiry Officer that the Branch Manager had allowed the ECs drawal of advance and retention of the same till settlement and hence, the petitioner is deemed to have acted as per the instruction of the Branch Manager is not correct. The Disciplinary Authority has further stated that after withdrawing the advance amount of Rs.6,000/- for purchase of computer on 15.05.1998, she has retained the money till she refunded on 13.07.1998, i.e. nearly after two months, without incurring any expenditure. Thus, the Disciplinary Authority came to the conclusion that the charge No.1 is proved.

5.Learned counsel appearing for the petitioner would further submit that with regard to charge No.2 that the petitioner failed to obtain stamped receipt for Rs.5,000/- from the supplier M/s.Ahana Computers and made the payment in cash to the supplier against norms, the Enquiry Officer has correctly held that no evidence was produced to show that the petitioner paid cash to M/s.Ahana Computers on 13.07.1998 without obtaining stamped receipt from them. But, the Disciplinary Authority has held that the petitioner was fully aware that any payment exceeding Rs.500/- should be made with stamped receipt and that she being a prudent Cashier, ought to have insisted for stamped receipt when the payment had exceeded Rs.500/- and finally, she failed to check the same, simply brushing away her responsibility on some one to obtain stamped receipt.

6.Learned counsel appearing for the petitioner further submitted that with regard to Charge No.3, namely, the conduct of the petitioner as above is unbecoming of an employee of a financial institution, when the Enquiry Officer has held that the charge is not proved for the reason that the charge Nos.1 and 2 are not proved, the Disciplinary Authority was of the opinion that the charge No.3 is proved.

7.Learned counsel appearing for the petitioner further submitted that with regard to the second charge memo, namely, the petitioner has manipulated the attendance register and signed in the place for 2/9/98, 3/9/98, 4/9/98, 7/9/98 and 8/9/98 as if she had attended the office in time on those days, the Enquiry Officer has held that the charge was not proved on the ground that the petitioner was permitted to sign the attendance register by the Branch Manager since the Branch Manager's initial was found at the bottom of the attendance register. But, the Disciplinary Authority, without accepting the stand taken by the Enquiry Officer, has held that at the time of closure of the attendance register, the persons who are un-authorisedly absent are marked with 'X' and that the Branch Manager signs at the bottom of the attendance register signifying that the attendance register was closed for the day and that 'X' was marked against her name in the attendance register and therefore, as per the rules, she ought to have signed in the late attendance register. But, the petitioner had signed in the attendance register overwriting the 'X' mark made by the Branch Manager on those days. Hence, any alteration/addition/deletion of entries in the registers could be done only with the authentication of the Branch Manager. i.e. the Branch Manager should sign or initial at the exact place where such alteration or addition or deletion is made, but, no such signature or initial of the Branch Manager was seen as authentication near the 'X' mark for overwriting on the same. Thus, he imposed the punishment of compulsory retirement for the reason that the petitioner had committed grave irregularities by misappropriation and manipulation of official records.

8.Thereafter, the first respondent herein issued Proceedings dated 28.10.2005 imposing the punishment of compulsory retirement from service. As against the same, the petitioner preferred an Appeal and the same was dismissed by the second respondent vide Proceedings dated 06.06.2006. Therefore, the petitioner is before this Court with the above prayer.

9.Learned counsel appearing for the petitioner would further submit that when there was an allegation of misappropriation of Rs.6,000/- on 15.05.1998, two charge memos were issued against the petitioner after four years from the date of incident namely, on 02.12.2002 and therefore, the same shows that the petitioner has been victimised and the issuance of charge memo is without any basis. The delay in issuance of charge memo is liable to go.

10.With regard to the charge of manipulation of attendance register, learned counsel appearing for the petitioner would submit that when the petitioner was charged for coming late on the dates mentioned in the charge No.1, she has given justifiable explanation that she was having five months old baby and that she was allowed a grace time of 10 to 20 minutes to sign the attendance register. Moreover, she was permitted by the Branch Manager to over write on the 'X' mark and it was obvious from the attendance register that she continuously initialled on the 'x' mark which could not be done without the approval of higher officials. Only after getting oral permission from the Branch Manager, the petitioner signed the attendance register. This explanation offered by the petitioner for late coming and signing attendance register was accepted by the Enquiry Officer. Therefore, when the charges levelled against the petitioner that she manipulated the attendance register and signed in the places for 02.09.98, 03.09.98, 04.09.98, 07.09.98 and 08.09.98 were not proved, the Disciplinary Authority, without accepting the findings given by the Enquiry Officer, has wrongly come to the conclusion that the above said charge stood proved, which cannot be accepted. The reason being that when the petitioner was allowed a grace time of 10-20 minutes to sign in the attendance register by the Branch Manager and that the Branch Manager has also permitted the petitioner to overwrite on the 'x' mark, the Disciplinary Authority cannot take a different stand. Inasmuch as the charges levelled against the petitioner has been properly explained and that the explanation has been rightly accepted by the Enquiry Officer, the Disciplinary Authority has exceeded its jurisdiction, which is not sustainable in law.

11.With regard to the charge that she manipulated the attendance register and signed the attendance register as if she attended the office on 05.06.98, 08.06.98, 06.07.98, 09.07.98, 09.09.98 and 15.09.98 when she had not attended the office on those days, a detailed explanation has been given by the petitioner stating that she did not attend to Cashier's work and was allotted some other work like typing, clerical work etc. by the Branch Manager for the days mentioned in the charge memo. Although she came late to the office on those days, only with the permission of the Branch Manager, she erased the 'x' mark and signed the attendance register. Though the explanation offered by the petitioner have been accepted by the Enquiry Officer, it is not open to the disciplinary authority to take a different view. When the poor petitioner was having only five months old baby, taking note of the fact that grace period of 10 to 20 minutes can be availed by the petitioner, she has come late, only with the permission of the Branch Manager. But for the extraneous reasons, the Disciplinary Authority, differing from the report of the enquiry officer, has held that the report of the enquiry officer cannot be accepted, which is wholly unsustainable.

12.Concluding his argument, learned counsel for the petitioner would submit that even if the disciplinary authority were of the view that the charges said to have been proved, they could have resorted to give a minor penalty, but, the disciplinary authority has imposed the major penalty of compulsory retirement for the un-proven charges. Therefore, the impugned order of compulsory retirement is liable to be modified.

13.By filing a counter affidavit, learned counsel appearing for the respondents submitted that since the petitioner is a Workman and the Corporation is an Industry under the provisions of the Industrial Disputes Act and that she has suffered the order of compulsory retirement for the proved misconduct, she has to approach the Labour Court or the Industrial Tribunal. Therefore, the issue of compulsory retirement could be enquired into and adjudicated upon by the Labour Court or the Industrial Tribunal constituted in accordance with the provisions of the Industrial Disputes Act. But, without resorting to the statutory remedy available to the petitioner, she cannot come to this Court by way of filing this writ petition under Article 226 of the Constitution of India and by passing the above mentioned procedure. As the writ petition is not maintainable in law on the ground of availability of effective and efficacious alternative remedy before the Labour Court or Industrial Tribunal, the same is liable to be dismissed.

14.Learned counsel appearing for the respondents submitted that when the petitioner was in the habit of frequently manipulating the attendance register, she was issued with the charge memo calling upon her to give explanation as to why action should not be taken against her. When she was marked absent for the places 02.09.98, 03.09.98, 04.09.98, 07.09.98 and 08.09.98, once again she manipulated the attendance register on 05.06.98, 08.06.98, 06.07.98, 09.07.98, 09.09.98 and 15.09.98. Therefore, when she has been a habitual late comer, she cannot be permitted to avail the late all the time. As she was entitled to avail the grace time of 5 to 10 minutes to sign the attendance register, she is not entitled to manipulate the attendance register. Even for the dates 02.09.98, 03.09.98, 04.09.98, 07.09.98 and 08.09.98 relating to the manipulation of attendance register are accepted for the reason that the Branch Manager has allowed her to mark attendance by over writing on the x mark, she cannot give any explanation again to the second charge of manipulation of the attendance register as if she had attended the office on 05.06.98, 08.06.98, 06.07.98, 09.07.98, 09.09.98 and 15.09.98. As there was no such permission granted by the Branch Manager for the above dates, the disciplinary authority has come to the conclusion that the Branch Manager has no authority to permit the petitioner to alter her absence as marking her presence. When the attendance registers are all maintained by the office to check the late comers regularly, but for the reason that she has been working in the same office, the Branch Manager cannot show any sympathy on the petitioner. Therefore, the charges levelled against the petitioner clearly show that she was a habitual late comer. Therefore, the disciplinary authority, considering the fact that both the delinquent and the Branch Managers are working in one Branch, taking advantage of the position that the Branch Manager has unnecessarily condoned her absence by allowing her to mark her presence on 02.09.98, 03.09.98, 04.09.98, 07.09.98 and 08.09.98, has not accepted the report of the enquiry officer. Moreover, there is no such condonation or permission said to have been given by the same Branch Manager for marking her attendance on 05.06.98, 08.06.98, 06.07.98, 09.07.98, 09.09.98 and 15.09.98. Therefore, to maintain decorum, devotion to the work and proper regulation, the disciplinary authority has rightly differed the finding of the enquiry officer and held the petitioner guilty of all the charges. Therefore, aggrieved thereby, the petitioner has preferred an Appeal before the Board of Directors who is the Appellate Authority. The findings and conclusion given by the Disciplinary Authority were proved and therefore, no interference is called for.

15.I also find merits on the submission made by the learned counsel for the respondents. Although the respondents took a preliminary objection with regard to the maintainability of the writ petition, since the petitioner has to approach the Labour Court, due to passage of time and taking note of the fact that the writ petition is pending for almost 10 years, this Court, without going into the submission of maintainability, is inclined to dispose of the writ petition by going into the merits of the matter.

16.An officer can come late due to traffic problem in the Metropolitan cities, but, it cannot be a regular excuse. In the present case, the petitioner came to the office late on 05.06.98, 08.06.98, 06.07.98, 09.07.98, 09.09.98 and 15.09.98 and the allegation against her spoke that she manipulated the attendance register. Although the petitioner has stated that only the Branch Manager has permitted her to alter the attendance register, the said Branch Manager was not examined to support such submission. Therefore, the allegation of manipulation of attendance register stood proved and hence, such finding cannot be interfered with.

17.It is seen from records that the Branch Manager has condoned her late coming on 2939 8998. But, no such permission was granted by the same Branch Manager for the dates as if she attended the office on 05.06.98, 08.06.98, 06.07.98, 09.07.98, 09.09.98 and 15.09.98 when she had not attended the office on those days which are violation of 6.14(vii), 6.14(viii), 6.14 (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation. When the findings given by the enquiry officer was not supported with any factual reason or records, the disciplinary authority has rightly differed from the report of the enquiry officer, held that the charges levelled against the petitioner are proved and that the Appellate Authority has also confirmed the same. Therefore, this Court sitting under the Article 226 of the Constitution of India, is unable to find any merit to interfere with the same. Accordingly, the writ petition fails and the same is dismissed. Consequently, M.P. No.2 of 2006 stands closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Managing Director,
Tamil Nadu Industrial Investment
Corporation Ltd.,
No.692, Anna Salai,
Nandanam,
Chennai-35.

2.The Chairperson,
Board of Directors,
Tamil Nadu Industrial Investment
Corporation Ltd.,
No.692, Anna Salai,
Nandanam,
Chennai-35.

+1cc to M.R.Raghavan, Advocate Sr.19078
+1cc to Mr.M.Shreedhar, Advocate Sr.19415 [14/10/2020]

mr[co]
srg 16/07/2020