IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.460 of 2013
and
M.P.No.1 of 2013

The Management of
Indian Bank
37, Rajaji Salai
Chennai - 1
Rep.by its Assistant General Manager ...Appellant

-vs-

1.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court, Chennai-6.
2.Indian Bank Employees
Association, rep.by its
General Secretary
Old No.197, New No.250
Lingi Street, Chennai-600 001. ...Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order of the learned Judge dated 28.09.2012 in W.P.No.10311 of 2008.

Prayer in W.P.No.10311 of 2008: This Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records of the 1st Respondent in I.D.No.423/04 and quash in award dated 28/12/2006.

For Appellant : Mr.Anand Gopalan

For R1 : Labour Court
For R2 : Mr.V.Ajoykhose

JUDGMENT
(Order of the Court was made by V.SIVAGNANAM, J.,)

This Writ Appeal has been filed to set aside the order of the learned Judge dated 28.09.2012 in W.P.No.10311 of 2008.

2.The fact of the case is that the appellant is the Nationalized Bank, having its branches throughout the country, including one at Hosur. One Mr.M.Sukumaran, joined in the service of the appellant's Bank as a Clerk on 30.03.1976. He worked at Hosur Branch from July 1989. On 05.01.2000, since the cashier of the Bank went on leave, the said workman, attended the work of cashier and one Mrs.Chandrika Nagarajan and Venugopal were looking after the counter Nos.1 and 2 respectively. In the course of the day, exchange of currency notes had taken place between the concerned workman and Mrs.Chandrika Nagarajan and she noted down one such exchange of five section of fifty rupees notes denominations (i.e., Rs.25,000/-) not returned by the concerned workman and in the top corner of rough cash book she mentioned about the same. After closing of the business hours, while verifying the cash balance, Mr.Arokiasamy David, Assistant Manager of the Branch, found a difference of Rs.25,000/- and Mrs.Chandrika Nagarajan also reported a shortage of Rs.25,000/- in her cash. Further, she complained that in the course of exchange of currency notes, the concerned workman had not returned Rs.25,000/-, which he had taken from her and that accounted for the difference. As the shortage was in the cash handled by Mrs.Chandrika Nagarajan, she gave a complaint that the concerned workman had not returned Rs.25,000/- which he had taken from her and thereby there was a shortage.

3.On 06.01.2000, the Branch Manager of the Hosur Branch reported about the complaint of Mrs.Chandrika Nagarajan to the Zonal Office narrating as to what had transpired on 05.01.2000. In turn, on 07.01.2000, one Mr.Santhana Gopalakrishnan, Senior Manager of the Regional Office, Dharmapuri, visited Hosur Branch and investigated the shortage of Rs.25,000/- in cash reported by Mrs.Chandrika Nagarajan. On 10.01.2000, Mr.Santhana Gopalakrishnan made his report, in which, he had mentioned about Mrs.Chandrika Nagarajan having noted down in the rough cash book "50x500". Therefore, he recommended that there should be a deeper probe by Vigilance Department. Accordingly, Mr.M.Paulraj, Vigilance Officer visited the Hosur Branch and started investigation of the same. When he was searching whether there was an entry of payment of Rs.25,000/-, he found that there were two entries of which one was debiting a cheque in the current account of K.S & Co. and the other was the payment received by the payee of the cheque, Mr.B.M.Ramachandran. When the Vigilance Officer visited Mr.Ramachandran and enquired him about the details of the payment, he had told him that he was the payee of the cheque for Rs.25,000/- which he had received from K.S. & Co., and that when he visited the Branch at 11.30 am on 05.01.2000, he was given a token No.606 and thereafter, he handed over the token to the cashier, who, in turn, received five section of Rs.50/-denomination currency notes from the lady cashier of the adjacent counter.

4.In the course of investigation, it found out that on 05.01.2000, one B.M.Ramachandran presented a cheque No.291612 for Rs.25,000/-. It appears that he was paid Rs.25,000/- in Rs.50/- denominations ie., 500 pieces.

5.According to Mrs.Chandrika Nagarajan, the concerned workman had taken five sections of Rs.50/- denominations and by retaining two of the stitched bundles, he had paid remaining amount with three sections of loose Rs.50/- denominations. Mr.Ramachandran also confirmed that he saw the concerned workman collecting the amount from Mrs.Chandrika Nagarajan for making the payment.

6.The complaint of Mrs.Chandrika Nagarajan was that out of the amount which the concerned workman had received from her for exchange, he had not returned Rs.25,000/-. When the concerned workman was questioned as to how he could make the payment of Rs.25,000/- to Ramachandran in Rs.50/- denominations (500 pieces) when he had only 413 pieces, he gave an explanation that in the morning sub staff Sivaprakasam tendered Rs.22,000/- in fifty rupees denominations and he wanted Rs.500/- denominations for that amount. He had collected that amount and promised to pay the five hundred rupees denominations in due course.

7.In view of the above, on 21.01.2000, the concerned workman was issued with a show cause notice calling for his explanation. He gave his reply on 02.02.2000 stating that on 05.01.2000, at the specific request of Mrs.Chandrika Nagarajan, exchange of rupee notes between the counters took place and the Branch never had a register for maintaining internal transactions and that he had not received any denominations, since he had sufficient denominations to make the payment and he was in no way responsible for the shortage.

8.On 16.02.2000, charge sheet was issued to the concerned workman, charging him with the misconduct of having acted in a manner prejudicial to the interest of the Bank. A domestic enquiry was held on the charges. After completion of enquiry by the officials, the Enquiry Officer gave his report on 22.12.2000. A copy of the finding of the Enquiry Officer was sent to the concerned workman who by his letter dated 29.01.2001 submitted his comments. On 23.03.2001, the Disciplinary Authority issued a show cause notice proposing the punishment of dismissal for charges 2 and 3 and called upon the concerned workman to appear for personal hearing on 12.04.2001. Considering his representation, on 17.04.2001 the Disciplinary Authority awarded the punishment of dismissal. On appeal by the concerned workman, the punishment was modified from one of dismissal into compulsory retirement.

9.Aggrieved against the order of compulsory retirement, the 2nd respondent Union raised an industrial dispute before the 1st respondent in I.D.No.423 of 2004.

10.After considering the available evidences on record and after hearing the arguments advanced by either side, the Industrial Tribunal passed an award dated 28.12.2006 holding that when there is no proof to show that only fifty rupees denomination has been exchanged between the concerned workman and Mrs.Chandrika Nagarajan, it cannot be said that only fifty rupees denomination notes alone were exchanged and they were not returned to Mrs.Chandrika Nagarajan and such a contention contrary thereto is without any substance and hence directed the appellant to reinstate the concerned workman into service with continuity of service, back wages and other attendant benefits.

11.As against the order of the 1st respondent, the appellant has preferred Writ Petition before this Court in W.P.No.10311 of 2008 and this Court by its order dated 28.09.2012 dismissed the Writ Petition with a direction to the appellant to pay the backwages for the period of his dismissal till his actual date of retirement along with all terminal benefits, as if no penalty was suffered by the concerned workman during the course of his employment.

12.Aggrieved by the order of the learned Single Judge, the appellant has preferred this present Writ Appeal.

13.Learned counsel for the appellant would submit that the 1st respondent failed to give cogent reasons to differ from the conclusion of the Enquiry Officer. Further, the learned Single Judge failed to appreciate the fact that the 1st respondent did not give any valid reason for displaying the finding of the Enquiry Officer. The 1st respondent without any valid reason substituted its conclusion without assigning acceptable reason and when two views are possible, the 1st respondent is not permitted to substitute its own view by disbelieving the findings of the Enquiry Officer. Further, the learned Single Judge failed to consider the false explanation averred by the concerned workman, which was dismissed by the Enquiry Officer and also the evidence of Ramachandran. Further, there is a failure on the part of the trade Union to show any strained relationship between the concerned workman and the complainant Mrs.Chandrika Nagarajan and accordingly the learned counsel for the appellant further reiterated other grounds raised in the grounds of the Writ Appeal and thus pleaded to set aside the order of the learned Single Judge.

14.Learned counsel appearing for the 2nd respondent supported the order of the learned Single Judge contending that the Tribunal has rightly analysed and reappraised the evidence available on record; the Tribunal clearly found that no evidence and no proof to show that the Rs.50/- denomination has been exchanged between the workman and Mrs.Chandrika Nagarajan; in the absence of any proof, based on the oral evidence of Mrs.Chandrika Nagarajan alone, the delinquent employee cannot be found guilty, and hence he could not be punished by imposing compulsory retirement and that the Tribunal rightly analysed the evidence and set aside the Enquiry Officer's finding and ordered to reinstate the concerned workman with backwages and other attendant benefits. The learned Single Judge also upheld the finding of the Tribunal holding that there is no reasons to interfere with the finding of the learned Single Judge and thus pleaded to dismiss the Writ Appeal.

15.Heard the learned counsel for the parties and perused the records.

16.The admitted fact of the case is that the workman-Mr.M.Sukumaran, Clerk/Shroff, joined in the service of the appellant Bank on 30.03.1976 and he was lastly employed in Hosur Branch from July 1989. Permanent Cashier appointed in this Bank went on leave from 05.01.2000 and thereby the workman was assigned with the work in payment counter. At that time, Mrs.Chandrika Nagarajan was working in the receipt counter. On 05.01.2000, Mrs.Chandrika Nagarajan had reported shortage of Rs.25,000/-. According to her, it was given to the delinquent clerk, but, the concerned clerk denied the said allegation.

17.Admittedly, there was a shortage of Rs.25,000/- in the counter handled by Mrs.Chandrika Nagarajan therefore, she gave a complaint before the Regional Manager alleging that although she gave Rs.4.75 Lakhs to the concerned workman, he returned only Rs.4.5 Lakhs and he did not return the balance amount of Rs.25,000/-. Upon receipt of the complaint from Mrs.Chandrika Nagarajan the appellant conducted disciplinary enquiry and based on the findings holding him guilty, the delinquent was imposed with the order of compulsory retirement.

18.We have carefully considered the Enquiry Officer's report as well as the impugned order dated 28.12.2006 in I.D.No.423 of 2004. On perusal of the Enquiry report, it is found that the Enquiry Officer relied upon the evidence of Mrs.Chandrika Nagarajan and one Ramachandran. While analysing the evidence, the Enquiry Officer mentioned about the MEX-3 and it runs as follows:-

"letter dated 05.01.2000 from Mrs.Chandrika Nagarajan, addressed to Regional Manager, Dharmapuri narrates the happening on 05.01.2000 and informs that she had given 5 sections of Rs.50/- denominations around 11 O' Clock to CSE., and he said he did not receive the same."

19.From the above, it is seen that according to the allegation of Mrs.Chandrika Nagarajan she had given 5 sections of Rs.50/- denomination to the concerned workman around 11 O' Clock. However, in the letter addressed to the Vigilance Officer by Mr.Ramachandran it would show that he reached the appellant Bank only at 11.30 am to encash the cheque for an amount of Rs.25,000/-. He received token No.606 and when his turn came up, he went to the counter and received Rs.25,000/-, besides he had witnessed the collection of Rs.25,000/- from the said Mrs.Chandrika Nagarajan. Letter dated 13.01.2000 sent by the Ramachandran also runs as follows:-

"To
The Vigilance Officer
Indian Bank
Zonal Office
Kovai.

Sir,

I came to the Indian Bank, Hosur Branch on 05.01.2000 Wednesday at 11.30 am., to encash the cheque for Rs.25,000/-. They gave me a token No.606.

After some time, the cashier called me by mentioning the token No. I handed the same. Immediately he stand up and received a sum of Rs.25,000/- from a near woman cashier and asked me to take the same as it is.

Before I took the same, asked me to wait and removed two cash bundles from them, instead of that he has given me two sealed bundles and asked me to take the cash.

After I count the cash and returned. This is the incident happened before me."

Both the above mentioned two facts play a vital question, whether to rely on the evidence of Mrs.Chandrika Nagarajan or Mr.Ramachandran. But the Enquiry Officer relying upon the evidence of Mrs.Chandrika Nagarajan, found him guilty of the charges.

20.This apart, we have perused the report of the Enquiry Officer, wherein it is mentioned that the appellant Bank is not having Internal Transactions Register to transfact funds between the bank staffs. Therefore, the contention of Mrs.Chandrika Nagarajan that on 05.01.2000, she had given five sections of Rs.50/- denominations to the concerned workman around 11 O' Clock would go to show that there may not be an entry in the

Internal Transaction Register, since it has not been opened in the appellant Bank. Further, such a huge amount, during the year 2000, given to another counter workman without any entry in any register or acknowledgment for receiving the amount is not legally acceptable one. As a matter of fact, when Mrs.Chandrika Nagarajan and delinquent employee were exchanging Rs.25,000/-, after finding that the delinquent employee was not having sufficient money to return the balance amount of Rs.25,000/-, as per Rule, Mrs.Chandrika Nagaran ought to have entered the same in the concerned Register and ought to have obtained endorsement from the delinquent employee. But, that requirement has not been fulfilled by Mrs.Chandrika Nagarajan. Secondly, both of them are highly experienced officials, therefore, they cannot plea ignorance of existing practice to register the said exchange. Besides, there is no evidence to show that Mrs.Chandrika Nagarajan had given five sections of Rs.50/- denominations to the concerned workman on 05.01.2000. In the absence of any material to show that the concerned workman had received a sum of Rs.25,000/- from Mrs.Chandrika Nagarajan he could not be held responsible for shortage of Rs.25,000/- in the counter of Mrs.Chandrika Nagarajan.

21.The Tribunal analysed the evidences, step by step, adduced before the Enquiry Officer and observed its findings as follows:-

> "10.
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> ....Because, in this case, the complainant namely Mrs.Chandrika Nagarajan, while she was examined as MW5 has stated that she has no record to show how much amount has been exchanged between her and the concerned employee and she also stated that after tallying her receipts denomination wise, she was making out that Rs.4,75,000/- was given to the concerned employee in exchange of which he had given Rs.4.5 Lakhs of Rs.100/- stitched notes from which she can confirm that she has received only Rs.4.5 Lakhs cash for Rs.4.75 Lakhs and she further stated that about the notation on the top of the rough cash book, when they were making exchange, in some occasions, the concerned employee gave the cash immediately and in some cases it was delayed and in that case, it was written on the top of the register and for that she had mentioned the notation. Further, she has stated that she noted this 50x5 on the top of the register and when she was asking the concerned employee that money was not given back to her for that transaction, for which she had put up a circle around that note in front of the concerned employee. Under such

circumstances, it cannot be said that only Rs.50/- denomination was exchanged and it was not returned to her. Though the Vigilance Officer has enquired Mr.B.M.Ramachandran, subsequently and has come to the conclusion that only Rs.25,000/- of fifty rupees denomination was given to him and which money was received by the concerned employee from Mrs.Chandrika Nagarajan is only on surmise. Because, even though the chart was prepared for denomination wise on 05.01.2000 for the counter of concerned employee, no chart was prepared with regard to Mrs.Chandrika Nagarajan. Further when the exchange of rupees independently to the counters was not ruled out, how the Vigilance Inspector and also Senior Manager had come to the conclusion that the evidence given by Mr.Sivaprakash cannot be believed. Therefore, from the documents produced in this case, I come to a conclusion that even the approach of the respondent/Bank that only fifty rupees denomination was given on exchange and it was not returned by the concerned employee is without any basis and they have built up the case only on the allegations made by Mrs.Chandrika Nagarajan, and the bank has come to the conclusion that fifty rupees denomination alone was exchanged between the concerned employee and Mrs.Chandrika Nagarajan and approached this case with perversity. When there is no proof with regard to exchange of notes and when there is no proof how much amount has been exchanged between the concerned employee and Mrs.Chandrika Nagarajan, it cannot be said that only fifty rupees denomination alone was exchanged and that too Rs.25,000/- was given by her for exchange is without any basis and they have approached the customers with a pre-concluded ideas and they have obtained the evidence. For that they have relied on the denomination chart, which cannot be a true one without any proof that no exchange independently cannot be done in these circumstances. Therefore, I find the theory of fifty rupees denomination alone was exchanged between the concerned employee and Mrs.Chandrika Nagarajan, is a false one and the respondent/Bank approached the case with a pre-concluded theory. Further, when Mr.Sivaprakash, a co-employee deposed before the Enquiry Officer that he has exchanged fifty rupees denomination in exchange of Rs.500/- notes from the concerned employee, it was rejected by the Enquiry Officer on the ground that when he asked for exchange of currency, the concerned employee informed that he was not having the same at that time, which according to the Enquiry Officer is a false one because when he alleged to have asked for exchange at 10.30 am., the Enquiry Officer has come to the conclusion that the concerned employee must have five hundred rupees denomination and therefore, his evidence cannot be accepted is without any substance because, learned counsel for the petitioner has clearly stated that at that time when Mr.Sivaprakash approached for exchange of notes, there was no loose five hundred rupee notes and he has got only stitched bundles and therefore, he asked Mr.Sivaprakash to wait for some time and whenever he receives denomination he will pay the same, which can be a possible answer for the same. But, on the other hand, the Enquiry Officer has totally rejected the evidence of Mr.Sivaprakash on the ground that both the concerned employee and Mr.Sivaprakash are in one union and Mrs.Chandrika Nagarajan, was in rival union and therefore, his evidence is an interested one and he said it is an afterthought. But, even at the time of giving explanation, the concerned employee has given the explanation that Mr.Sivaprakash approached him for exchange of ntoes and he has made the same. Therefore, it cannot be said as an afterthought. Similarly, Mr.B.M.Ramachandran has stated that he has given a statement after the receipt of money which cannot be a true statement because shortage of money was found only at 4.30 pm., and no one has approached the said B.M.Ramachandran at that time and only the Vigilance Officer after a week's time has approached Mr.Ramachandran and obtained the evidence. When such is the fact, it cannot be said that Mr.B.M.Ramachandran has given a true statement with regard to exchange and the reason given by the Enquiry Officer for accepting the evidence of Mr.B.M.Ramachandran and rejecting the evidence of Mr.Sivaprakash is without any substance. Under such circumstances, the finding given by the Enquiry Officer is a perverse one and without any legal evidence."

22.Agreeing with the above reasonings, learned Single Judge also observed that there is no direct evidence available against the workman, hence upheld the findings of the Tribunal and also finding that the workman had reached the age of superannuation declined the prayer for reinstatement. He further directed the appellant to pay the backwages for the period of his dismissal till his actual age of retirement and also all terminal benefits, as if no penalty was suffered by him during the course of his employment. We also find no error, therefore, we find no reason to interfere with the order of the learned Single Judge dated 28.09.2012 in W.P.No.10311 of 2008 and accordingly we confirm the same.

23.In the result, the Writ Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jer
To

1. The Presiding Officer,
   Central Government Industrial Tribunal
   Cum Labour Court, Chennai-6.

2. The Assistant General Manager,
   Indian Bank,
   37, Rajaji Salai,
   Chennai- 1.

+1 CC to Mr.V.Ajoy Khose, Advocate, Sr.No. 30342.
+1 CC to M/s.T.S.Gopalan & Co., Advocate, Sr.No. 30149.

W.A.No.460 of 2013
and M.P.No.1 of 2013

RSI(CO)
LS(07/09/2021)