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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.13871 OF 2016
AND WMP NO.12177 OF 2016

1. The Deputy General Manager (B&O),
Chennai Zone II,
State Bank of India,
Rajaji Salai, Chennai - 600 001.
2. The Deputy General Manager,
(Operation & Credit), Appellate Authority,
State Bank of India,
Local Head Office,
Chennai - 600 006. ... Petitioners

Vs.

1. The Presiding Officer,
Central Government Industrial Tribunal-cum-
Labour Court, Shastribhavan,
Chennai - 600 006.
2. G.Keerthivasan ... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent in I.D.No.89 of 2013 and quash its award dated 16.12.2015.

For Petitioner : Mr.Anand Gopalan
For M/s.T.S.Gopalan and Co.

For Respondent No.1 : Tribunal

For Respondent No.2 : Mr.K.M.Ramesh

O R D E R

Inveighing the Award passed by the Tribunal in I.D.No.89 of 2013, dated 16.12.2015, the Management has preferred the present Writ Petition.

2.The Petitioner Management had given a charge memo to



the second respondent for committing certain irregularities and he was discharged from the duty.

3.The gravamen of the charges are as follows:-

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(i) the second respondent debited non-home SB account of one of the account holders and credited the proceeds to his own account on 12 occasions, and said to have prepared composite vouchers and debited the SB account of one G.Marudakasi and credited to his account and withdrawn money subsequently,

(ii) he debited Bank Charges account without any approval from the sanctioning Authority on four occasions, and

(iii) he indulged in outside borrowing and tarnished the reputation of the Bank.

4.The Enquiry Officer has held the charges proved and the disciplinary authority imposed punishment of discharge from service, in terms of Clause 6(d) of the Memorandum of Settlement and he was discharged from service with superannuation benefits. The respondent raised an industrial dispute and the Tribunal had found that the charges were proved. However, in respect of the first charge, it is held that even by admission of the petitioner it is only a procedural lapse and there is no element of embezzlement involved. In other words, the Bank has not proved the misconduct of embezzlement on the part of the employee. In respect of second charge, it is held that even though he obtained permission from the Bank Manager, he has debited the account without any authority. In respect of third charge, it is held that borrowing is a personal affair of the employee and there is no basis to frame charges against him. Based on those findings, modified the punishment of discharge from service to one of reduction of scale of pay to lesser scale by two stages and reinstatement with 25% of backwages.

5.Inveighing the Award of the Labour Court, the learned counsel appearing for the Petitioner Management would vehemently contend that the Tribunal, having found that the charges are proved, should have upheld the punishment imposed. He relied on the judgment of the Hon'ble Supreme Court, in the case of DAMOH PANNA SAGAR RURAL REGIONAL BANK AND ANOTHER VS. MUNNA LAL JAIN [(2005) 10 SCC 84]. The relevant portion of the judgment reads as under:-

"17. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion



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and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996 (9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

6.As per the above judgment, a bank officer is expected to maintain higher standards of honesty and utmost integrity. It is not loss or profit, but maintaining discipline is the predominant concern of the Bank employee. Therefore, when an employee of the Bank commits misconduct on the issue of honesty and integrity, punishment of dismissal is not too harsh.

7.Likewise, the Hon'ble Supreme Court in DEPUTY GENERAL MANAGER (APPELLATE AUTHORITY) AND OTHERS VS. AJAI KUMAR SRIVASTAVA (2021 SCC ONLINE SC 4) has observed that an employee of the Bank requires to maintain absolute devotion, integrity and honesty. It requires the employee to maintain good conduct and discipline as he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. Therefore, the Hon'ble Supreme Court has confirmed the punishment of dismissal imposed by the Department by interfering with the decision of the High Court.

8.From perusal of the materials placed before this Court, it is seen that the second respondent employee has committed some procedural irregularities. Admittedly, there is no complaint from the account holder as to embezzlement or some misappropriation of money. On the other hand, one of the Joint Account Holders submitted a letter that only on her instructions, the money was withdrawn and the employee has committed procedural irregularities and the letter marked before the Enquiry Officer was accepted. From the above-said conduct, it is clear that there is no element of "mens rea" on the part of the employee to commit embezzlement or to defraud the



customers or depositors. It appears that he had acted in excess of his power taking law into his own hands.

9. Of course, it is true that the Bank employee shall maintain utmost discipline, honesty and integrity in the discharge of his duty, but, criminal intention is missing. Therefore, it shall be construed as procedural lapse committed by the employee. Likewise, in respect of other charges, there are procedural lapses. For such procedural lapses, the punishment of dismissal is too harsh. The Hon'ble Supreme Court, in UNION OF INDIA AND ORS. VS. P. BALASUBRAHMANYAM [CIVIL APPEAL NOS. 3592-3593 OF 2020 DATED 04.03.2021] has held that for procedural lapse, major punishment is too harsh and minor penalty can be imposed at the discretion of the disciplinary Authority or the Tribunal concerned.

10. But, remitting the matter back to Tribunal will put both parties to the ordeal of retrial and will cause mental agony. In DAMOH PANNA SAGAR RURAL REGIONAL BANK'S case cited supra, the Hon'ble Supreme Court has observed that in order to shorten litigations in exceptional cases, the Constitutional Court may interfere and impose appropriate punishment. The relevant paragraph of the judgment reads as follows:-

"15. To put differently unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further to shorten litigations, it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed."

11. In the instant case, disciplinary proceedings were initiated on 16.07.2009 and the matter has not attained finality even after lapse of 12 years. In order to give quietus to this issue, this Court is of the considered view that the Award passed by the Tribunal has to be interfered with. The reckless attitude of the employee, though not resulted in pecuniary loss, indicates lack of disappointment. If such reckless person is permitted to continue, it may result in a catastrophe. Once the employer loses confidence in his employee, it is natural for the employer to resist reinstatement of the employee. Therefore, the order of reinstatement by the Tribunal is not justified. At the same time, the employee is left with only one year of service. Therefore, he has nothing much to lose. The punishment



imposed by the Tribunal will have severe impact on the monetary benefits of the employee. He will get 25% of the backwages in the reduced scale of pay by two stages.

12. In order to avoid presence of the employee in the workplace and also considering procedural lapses committed by the employee, this Court is inclined to modify the punishment into one of compulsory retirement with effect from the date of this order. By this decision, the employee would not be reinstated, at the same time, he would not be prejudiced in respect of monetary settlement.

13. Therefore, the Award passed by the Tribunal in I.D.No.89 of 2013, dated 16.12.2015, is interfered with to the above extent by imposing compulsory retirement to the second respondent with effect from the date of the order of this Court i.e., on 10.03.2021. The second respondent will not be entitled to any attendant benefits for the interregnum period other than counting the period for the purposes of pension, gratuity and provident fund. The Management is directed to settle all other monetary benefits due to the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order.

14. With the above modifications, the Writ Petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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

+1cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.15454

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.15266

WP NO.13871 OF 2016
AND WMP NO.12177 OF 2016

GPL (CO)
KM(23/04/2021)