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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.22273 OF 2005

J.Veerappan

... Petitioner

Vs.

1. ICICI Bank Limited,
Registered Office,
"Landmark",
Race Course Circle,
Vadodara - 390 007.
2. The Presiding Officer,
The Central Government Industrial
Tribunal in Labour Court,
Shastri Bhavan,
Chennai 600 006.

... Respondents

(Cause Title amended as per the order dated 24.01.2012 in M.P.No.1 of 2012 in W.P.No.22273 of 2005)

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the Award in I.D.No.288 of 2004, dated 13.01.2005 passed by the 2nd Respondent and quash the same and consequently direct the 1st Respondent to reinstate the Petitioner with continuity of service and all consequential benefits including backwages.

For Petitioner : Ms.Usha Raman

For Respondent : Ms.Lakshaya Anand,
No.1 for Mr.Sanjay Mohan,
for M/s.S.Ramasubramaniam Associates

O R D E R

Petitioner has come up with this Writ Petition challenging the Award dated 13.01.2005 passed by the 2nd Respondent in I.D.No.288 of 2004 and for a consequential direction to the 1st Respondent to reinstate him with continuity of service and all consequential benefits, including backwages.



2. The Petitioner herein was employed as a Cashier/Clerk in the 1st Respondent/Bank. The Central Government, Ministry of Labour vide order dated 19.12.2003 referred the industrial dispute raised by the Petitioner herein to the 2nd Respondent/Central Government Industrial Tribunal-cum-Labour Court, Chennai and the Tribunal passed an Award on 13.01.2005, upholding dismissal of the Petitioner from service.

3. The issue raised by the Petitioner/employee is that, he was not at all responsible for opening two Savings Bank Accounts and one Current Account in the 1st Respondent/Bank and that, charges have been foisted against him and he was placed under suspension. It is his contention that, the domestic enquiry was conducted in violation of the principles of natural justice and that, the findings of the Enquiry Officer is completely perverse. He went on to contend that, the Disciplinary Authority and the Appellate Authority ought not to have passed an order of capital punishment, when there was no proper examination of witnesses. It is also his contention that, when the Management has made a complaint to the C.B.I. and the same has ended in acquittal, if punishment is imposed on him, then, it amounts to double jeopardy. According to the Petitioner, in any event, the Tribunal ought to have taken note of the services rendered by him and interfered with the same under Section 11-A of the Industrial Disputes Act, 1947.

4. According to the 1st Respondent/Bank, the Petitioner has opened two Savings Bank Accounts and one Current Account, which act is prejudicial to the interest of the Bank. He has made contradictory statements before the Income Tax Authority and in the domestic enquiry. The Income Tax Officials, on suspicion, entered the Bank and while inspecting, the Petitioner tried to enter the place to destroy the records. It is further stated by the 1st Respondent/Bank that, a detailed evidence has been tendered in the domestic enquiry and that, two persons viz. Harshad Ravi and Ganesh have tendered evidence against the Petitioner, and Harshad Ravi, who also faced domestic enquiry, was subsequently dismissed from service.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. It is seen that, the Petitioner/employee was given ample opportunity to adduce evidence and also to cross-examine the witnesses. The contention that, the Petitioner was not given any opportunity was disbelieved by the Industrial Tribunal. The Petitioner has issued Cheque Book in the name of fictitious person. Non-examination of one Ravishankar is not going to cause any prejudice to the Petitioner, when documents speak otherwise. It is observed by the Tribunal that,



Ravishankar is a close friend of the Petitioner and hence, negative aspect of the case need not be proved. The Tribunal held that, the domestic enquiry was conducted in a fair and proper manner and proceeded to render a finding on merits.

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7. Even though the Petitioner has challenged the domestic enquiry, only when the domestic enquiry is held to be not fair and proper, the question of letting in fresh evidence will arise. However, the parties are entitled to lead additional evidence as regards, whether the employee is a workman or not; whether the Management is an Industry or not and whether there is any discrimination/unfair labour practice, with regard to the past records of the employee and the like. But, in the case on hand, after the domestic enquiry has been held to be fair and proper, and recording evidence prior to arguments, the Tribunal proceeded to render a finding on merits.

8. It is well settled law that, in the domestic enquiry, strict proof of charges by positive evidence is not necessary, as in a criminal case. The Petitioner has committed a serious misconduct which has been held to be proved in the domestic enquiry and has been confirmed by the Industrial Tribunal.

9. The Apex Court in a decision rendered in the case of Disciplinary Authority cum Regional Manager vs. Nikunja Bihari Patnaik reported in JT 1996 (4) SC 457, has held that, even though there is no loss to the Bank, every Officer/employee is supposed to act within the limits of his authority. In the case on hand, the charge alleged against the Petitioner is serious in nature and there is no need for showing any indulgence. Even assuming for the sake of argument that, another view is possible on facts, there is no need for this Court to take that into account, as the Apex Court in the case of W.M.Agnani vs. Badri Das reported in (1963) 1 LLJ 684, has held that, even if another view is possible, the finding of the Tribunal need not be interfered with. For better appreciation, relevant portion of the judgment rendered in Agnani's case (supra) is extracted hereunder:

"11. ... The Tribunal took the view that this resolution clearly showed that the enquiry had to be held about the incident which took place on November 16, 1959 and it thought that the reference to his previous conduct was incidental and may have been necessary for determining the question of sentence, but it was not intended to be the subject matter of the enquiry. The High Court has taken a different view. Apart from the correctness of one view or another, it



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seems to us plain that in a matter of this kind, if the Tribunal put one interpretation upon the resolution and the High Court thought it better to put another, that cannot be said to introduce an error apparent on the face of the record in the order of the Tribunal. If it can be said that the view taken by the Tribunal is not even reasonably possible, perhaps an argument may be urged that the error is apparent on the face of the record; but, in our opinion, it would not be possible to accept Mr. Setalvad's argument that the construction placed by the Tribunal is an impossible construction. On the other hand, while conceding that the view taken by the High Court may be reasonably possible, we are inclined to think that the construction put upon the resolution by the Tribunal is also reasonably possible; in fact, if we had to deal with the matter ourselves, we would have preferred the view of the Tribunal to the view of the High Court."

10. It is represented by the learned counsel for the Petitioner that, in CBCID case, the Petitioner has not been found guilty. As stated supra, criminal proceedings and departmental proceedings are independent of each other and the findings rendered in the criminal proceedings will not be binding on the Civil Court, viz. the Tribunal, as has been held by the Apex Court in the case of M/s. Karamchand Ganga Pershad vs. Union of India reported in AIR 1971 SC 1244.

11. In view of the foregoing, this Court does not find any perversity in the Award passed by the Tribunal, warranting interference. Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

(aeb)



To:

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

+1cc to Ms.Usha Raman, Advocate, S.R.No.29525

+1cc to M/s.S.Ramasubramaniam Associates, S.R.No.29529

W.P.No.22273 of 2005

PCH (CO)
CS/19/08/2021