

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.22190 OF 2013

A.Jayaraman

... Petitioner

Versus

- 1.Union of India,
Rep. The Director of Postal Services,
O/o. Postmaster General,
Chennai City Region,
Chennai - 600 002.
- 2.Superintendent of Post Offices,
Kanchipuram Division,
Kanchipuram.
- 3.The Presiding Officer,
Central Government Industrial Tribunal
- cum- Labour Court,
Chennai - 600 006.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of Hon'ble 3rd Respondent Tribunal, which is made in I.D.No.8 of 2012, dated 18.10.2012 and quash the same, consequently to direct the Respondents 1 & 2 to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.S.Natarajan

For Respondents: Mr.M.Arvind Kumar
1 and 2 Senior Central Government
Panel Counsel

O R D E R

A cryptic award of the Labour Court is under challenge in this Writ Petition.

2.The brief facts are as follows:-

(a) While the petitioner was working as GDS Branch Post Master, at Melapudi Branch Office, a charge memo was issued for the misconduct of misappropriation of money. It is stated that the petitioner did not account the moneys received from the depositors into RD account and utilized it for some other expenses. The petitioner submitted an explanation that he was not attending to work to the particular account and that he has not made any entries. On the other hand, it is alleged that some other officials have attended the work and could have collected the money from the depositors without accounting the same. However, an Enquiry Officer was appointed and the charges were held to be proved in the enquiry. The Disciplinary Authority removed the petitioner from service for the above said misconduct.

(b) The petitioner has raised an industrial dispute before the Labour Court challenging the order of removal. Before the Labour Court, the parties examined one witness on each side and marked Exs.M1 to M14. The Labour Court has observed that "there is no force in the contentions on behalf of the petitioner whereas the contentions on behalf of the respondent are very cogent and acceptable".

(c) For the contentions raised by the petitioner that the complainants, who are the depositors, were not examined as witnesses to prove the charges, the Labour Court has held that "examination of complainants is not a legal imperative in all cases especially when the evidence based on which the finding of guilty is arrived at is based on documentary evidence as well. In this case, from the documentary evidence, it could well be found that the petitioner is guilty of the misconduct and also there is no prejudice to the workman owing to the non-examination of the complainants. The crucial aspect of the matter is that if the complainants had been examined with opportunity for the petitioner to cross examine them, would the finding have been different? The answer is emphatically in the negative in view of the fact that the best evidence is always that of the documents."

(d) In respect of the proportionality of the punishment, the Labour Court has observed that "coming to the punishment the question is whether the punishment of removal from service of the petitioner is proportionate to the gravity of the misconduct. On this aspect, the crucial finding of the Apex Court is that the amount misappropriated may be small or large yet it is an act of misappropriation which is relevant. Therefore, there is no scope for interference with the punishment imposed."

3. I have heard the submissions made by both sides.

4. At the outset, there is an allegation of violation of principles of natural justice. The charge is that the petitioner has received money from the depositors of RD account and failed to make entries in the Accounts book. A defense has been raised by the petitioner that some of the named employees of the Branch Post Office, who were in the habit of collecting money during delivery work and depositing it in the Post Office after making entries would have misappropriated the amount. There is a specific denial that he has not received any money from the depositors and that he has not made any entries in the Accounts book. In that case, the evidence of the depositors is crucial. The misconduct can be proved only by way of positive evidence by depositors that the money was deposited in the Post Office and that it was received by the petitioner. But, absolutely there is no evidence to show that the depositors had come to Post Office and handed over money to the petitioner. Unless the depositors are called as witnesses and an opportunity is given to the petitioner to cross examine them, the truth cannot be elicited.

5. Curiously, the petitioner has made allegations against some of the employees of the very same Post Office. In that event, those employees should have been examined as witnesses to prove that the money was not collected by them as stated by the petitioner. Therefore, the material evidence is that of the deposition of the depositors. If the depositors are not examined, making of deposit of money into RD account, automatically stands disproved.

6. The Labour Court had erroneously proceeded on the basis that examination of complainants is not a legal imperative in all cases especially when the evidence based on which the finding of guilty is arrived at is based on documentary evidence. Even for this purpose, it should be proved that the petitioner has made entries in the pass book in his own handwriting. In the absence of any proof that the entries made in the passbook or in the other Post Office records are that of the petitioner's handwriting, it cannot be construed that the documents are proved. Without any proof of actual deposit of money, forcing of delinquent to prove the non accounting is nothing but forcing a party to prove the negative. Therefore, the finding of the Labour Court is absolutely based on no evidence and on presumption and with prejudice mode. Therefore, in the event of failure to prove the deposit of money through the evidence of depositors and failure to prove the misappropriation committed by the petitioner is based on no evidence and thereby, legally unsustainable. The petitioner has

made several lapses in the procedure adopted by the Enquiry Officer.

7.The Labour Court without considering any of the lapses has held that the domestic enquiry conducted by the respondents is fair and proper. Such a finding, without recording any reason is improper and irregular. Therefore also, the finding of the Labour Court is not legally sustainable. Consequently, the finding of proportionality of punishment also unsustainable and is liable to be set aside.

8.Accordingly, the award dated 18.10.2012 passed by the Labour Court in ID No.8 of 2012 confirming the punishment of removal from service imposed on the petitioner is set aside and a direction is given to the respondents 1 and 2 to reinstate the petitioner into service within a period of two weeks from the date of receipt of a copy of this order.

9.The Writ petition is ordered accordingly. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

klt/tk
To

- 1.The Director of Postal Services,
Union of India,
O/o. Postmaster General,
Chennai City Region, Chennai - 600 002.
 - 2.The Superintendent of Post Offices,
Kanchipuram Division, Kanchipuram.
 - 3.The Presiding Officer,
Central Government Industrial Tribunal-cum- Labour Court,
Chennai - 600 006.
- +2 Ccs to Mr.S. Natarajan, Advocate sr 21127
+2 Ccs to Mr.M. Aravind Kumar, Advocate sr 21553.

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GPL(CO)
SP(29/06/2021)