BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
25.03.2021	01/04/21

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.9212 OF 2010

C.Kamaraj :Petitioner

- Vs -

1. The Deputy Commissioner of Labour
Appellate Authority under the
Tamil Nadu Shops & Establishments Act
Tiruvanathpuram Road,
Tirunelveli.

2. The Management
Tamil Nadu Mercantile Bank Ltd.
Mumbai Regional
Unit No.4E, 2nd Floor
Banking Complex, Vashi
Navi Mumbai 400 705. :Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records of the 1st respondent in T.N.S.E. 2/2006 and quash the order dated 31.10.2007 passed in T.N.S.E. 2/2006.

For Petitioner : Mr. S.Mohandass
For Respondents: Mr. M.Muthu Geethayan, Spl. GP for R-1
Mr. Jerin Mathew for R-2

ORDER

Assailing the order passed by the 1st respondent in and by which the order of dismissal of the petitioner from the service of the 2nd respondent bank was confirmed, the present petition has been filed by the petitioner.

2.It is the case of the petitioner that he joined as clerk in the 2nd respondent bank at Old Washermanpet Branch and after getting series of promotions and being posted at various places, at the crucial point of time, the petitioner was posted as Branch Manager at Hyderabad.

While working thus, the petitioner was placed under suspension with effect from 31.8.2002 vide order dated 30.8.02 for alleged irregularities and violation of rules and regulations and procedural lapses in the functioning of the petitioner as Branch Manager at Vadodara Branch in Gujarat. Upon suspension, the petitioner came over and started residing at Dindigul. Vide charge memo dated 2.12.2002, which was served on the petitioner at Dindigul, a series of charges were framed, to which the petitioner submitted his explanation dated 16.12.02. However, not being satisfied with the explanation, enquiry was initiated, which was held at Madurai and the enquiry officer held the charges as proved except for one charge, which was held not proved. Thereafter, the 2nd respondent/disciplinary authority, provided copy of the findings of the enquiry report to the petitioner and called upon the petitioner to submit further explanation by issuing show cause notice. The petitioner submitted his further explanation dated 29.9.03 refuting the charges, but without proper appreciation of the said explanation, the disciplinary authority dismissed the petitioner from service vide order dated 3.10.03. Against the said order, the petitioner preferred appeal to the appellate authority, who also concurred with the order of dismissal passed by the disciplinary authority and dismissed the appeal.

3.Against the said order, the petitioner preferred appeal u/s 41 of the Tamil Nadu Shops & Establishments Act before the Deputy Commissioner of Labour, Dindigul, as the petitioner was residing at Dindigul and dismissal order was also served on the petitioner at Dindigul and the same was taken on file as TNSE No.4/04. The 2nd respondent, questioning the jurisdiction of the Deputy Commissioner of Labour, Dindigul, to hear the said appeal, filed interim application, which was heard by the said authority, who held that the said authority has jurisdiction to hear the appeal. Aggrieved by the said order, the 2nd respondent filed W.P. (MD) No.6002/2005 and this Court, vide order dated 14.12.05 transferred the matter to the file of the Deputy Commissioner of Labour, Tirunelveli, the 1st respondent herein, which was renumbered and taken on file of the 1st respondent as TNSE No.2/06.

4.Very many contentions were raised before the 1st respondent by the petitioner, including allegation of bias against the enquiry officer. The petitioner also submitted that the charges being related to Vadodara Branch, records pertaining to the charges were not brought to Madurai and further the disciplinary authority is at Mumbai. It was the further contention of the petitioner that though he had asked the 2nd respondent to produce important documents, which were necessary to prove his case, however, the same were not provided to the petitioner. It was contended by the petitioner that though the said issues were raised before the disciplinary authority as well, it was not considered and, therefore, the passing of the order of dismissal from service, more so, when materials, as sought for by the petitioner having not been provided to him, when charge is made for major punishment, the order of the 2nd respondent, as confirmed by the appellate authority is wholly unsustainable. However, the 1st respondent, without proper appreciation of the materials placed before it, dismissed the appeal. Since certain important points were inadvertently left over, the petitioner filed a petition to the 1st respondent for reopening the case and though no counter was filed by the 2nd respondent and there was no objection, however, the 1st respondent dismissed the application for reopening of the case and aggrieved by the said orders of the 1st respondent, the present petition has been filed.

5.Learned counsel appearing for the petitioner submitted that bias alleged against the enquiry officer, on the ground that the enquiry officer was none other than the legal adviser of the bank had not been considered properly. It is the further submission of the learned counsel for the petitioner that though the charges pertain to dereliction of duties and commission of irregularities relating to the functioning of the petitioner at Vadodara Branch, yet not only the enquiry was conducted at Madurai, but many of the material records, which have a bearing on the case, and which are vital documents to prove the innocence of the petitioner have not been placed before the enquiry officer and inspite of the petitioner bringing the said fact to the notice of the enquiry officer and seeking production of the said documents, the same was negatived by the enquiry officer, without properly appreciating the necessities of the said documents, which is against the concept of fair play in the conduct of disciplinary proceedings. It is the further contention of the learned counsel for the petitioner that the 2nd respondent has not denied the relevancy of the document sought for by the petitioner and in the absence of the same, non-providing of the documents sought for by the petitioner vitiates the enquiry proceedings. It is the further contention of the learned counsel for the petitioner that even according to the 2nd respondent, there was no misappropriation or financial loss caused to the bank and that being the case, even if it is presumed that there are certain procedural irregularities committed by the petitioner, the same would not entail major punishment of dismissal from service and the said aspects have not been appreciated properly by the authorities, which requires interference with the punishment imposed on the petitioner.

6.Per contra, learned counsel appearing for the 2nd respondent submitted that all the documents that were necessary for proving the case were placed before the enquiry officer and at no point of time, the petitioner had raised any issue with regard to any document not having been placed. It is the further submission of the learned counsel for the 2nd respondent that, had the petitioner asked for any documents, the same would have been brought from Vadodara for the scrutiny of the petitioner. However, the petitioner neither made any request at the time of the enquiry nor his explanation reveals that he had sought for any documents at the time of enquiry. Therefore, pleading that the documents sought for by him were not provided to him during the enquiry, which, in turn, vitiates the enquiry, as raised at this point of time, before this Court, is nothing but a valiant attempt on the part of the petitioner to clutch to the last straw to get himself absolved from the rigors of the punishment.

7.It is the further submission of the learned counsel for the 2nd respondent that the whole enquiry revolved around documentary evidence and there was no necessity to place any oral testimony and all the documents necessary for proving the case of the 2nd respondent were placed before the enquiry officer through M.W.1. Further, after proper notice, enquiry was proceeded with and at no point of time during the enquiry or otherwise, did the petitioner make any claim that proper opportunity was not provided to him. Therefore, it is not open to the petitioner to come at this distant point of time and claim that proper opportunity was not provided to him by not providing the required documents.

8.It is the further submission of the learned counsel appearing for the 2nd respondent that the enquiry officer has not only relied on the admission of the petitioner in the enquiry but also the evidence recorded in the enquiry. The allegations in the charge memo coupled with the documentary evidence clearly reveals the omission and commission committed by the petitioner and the said irregularities are in the nature of destabilising the financial position of the bank. It is the further submission of the learned counsel for the 2nd respondent that it is not necessary that there should be actual loss caused to the bank or that there should be misappropriation, but the act of the petitioner in not adhering to the rules and regulations and procedural violations are also grave misconducts, which very well falls within the ambit of major delinquencies warranting major penalty.

9.It is the further submission of the learned counsel for the 2nd respondent that merely because for a similar charge the petitioner has been absolved by the enquiry officer would not be sufficient to hold that the other charges should also result in absolving the petitioner from the delinquencies. Each and every charge has to be scrutinized based on the documents pertaining to the said charge, which has been done by the enquiry officer.

10.It is the further submission of the learned counsel for the 2nd respondent that merely because there was no audit objections would not be suffice to hold that the petitioner has not committed the delinquencies. It is the further submission of the learned counsel that the evidence required to be placed in a domestic enquiry is not akin to the evidence to be placed in a criminal trial and it is only on the touchstone of preponderance of probabilities, the delinquent act of an employee is looked at and in the case on hand, the petitioner having committed very many irregularities and illegalities, which are against the rules and regulations and procedures prescribed by the bank, the authority has rightly proceeded against the petitioner and on the charges being held proved, the disciplinary authority has imposed the punishment of dismissal on independent application of mind which has been concurred with by the appellate authority as also the 1st respondent with reference to the materials available on record and this Court, sitting under Article 226 of the Constitution shall not interfere with the punishment imposed on the petitioner unless it is shown to be perverse and not made out by materials available on record and that the punishment is shockingly disproportionate and shocks the conscience of the Court. Accordingly, he prays for dismissal of the present petition.

11. This Court bestowed its undivided attention to the contentions advanced by the learned counsel on either side and also perused the materials available on record.

12. The Hon'ble Supreme Court, in ***B.C. Chaturvedi – Vs - Union of India, (1995 (6) SCC 749),*** while dealing with issue relating to the power of the Court relating to judicial review of the order passed by the disciplinary authority, held as under :

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the*

delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(Emphasis Supplied)

13. The above view has been reiterated by the Hon'ble Supreme Court in ***Principal Secy. Govt. of A.P. - Vs - M. Adinarayana, (2004 (12) SCC 579)***, wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the

several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * * * * *

26. <u>In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made</u>. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

14. In a recent decision in ***Director General of Police, RPF & Ors. - Vs – Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)***, the Hon'ble Supreme Court, adverting to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's case (supra)*, held as under :-

"12.1 ...... It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

*In **State of Andhra Pradesh v S.Sree Rama Rao,** a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. <u>It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence</u>. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with* *the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. <u>If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition</u>.*

*These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao.** The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. <u>The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be</u>. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. <u>A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding</u>. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.*

*In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha,** these principles have been consistently followed.*

In a recent judgment delivered by this Court in the ***State of Rajasthan & Ors. v. Heem Singh*** *this Court has summed up the law in following words :*

> *"33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy - deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere*

recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

In ***Union of India v. P. Gunasekaran,*** *this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.*

In paragraph 13 of the judgment, the Court held that :

"13.Under Articles 226 / 227 of the Constitution of India, the High Court shall not :

(i) <u>re-appreciate the evidence;</u>

<u>(ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;</u>

<u>(iii) go into the adequacy of the evidence;</u>

(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based;
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."
(Emphasis Supplied)

15. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the authorities, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

16.It is to be pointed out that the standard of proof required in a departmental proceedings is not in the same league as the standard of proof required to establish a charge in a criminal case. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by the strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by preponderance of probabilities. While the standard of proof in a criminal trial would be on the basis of the provisions of the Evidence Act and other statutes, however, in the departmental proceedings, it is only on the touchstone of preponderance of probabilities, the evidence is evaluated and, therefore, it is impermissible to equate the way in which the evidence ought to be evaluated.

17.True it is that in the enquiry proceedings very many documents have been placed and based on the same, the enquiry officer has rendered his finding. The Hon'ble Supreme Court, in *Rajendra Kumar Dubey's case (supra)*, following the ratio laid down in *Gunasekaran's case* has held that the High Court, sitting under Article 226 of the Constitution, while determining its scope of interference in a departmental proceedings is only bound to determine whether *(a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to* *be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.*

18. Keeping the above ratio laid down by the Hon'ble Apex Court in mind, it is seen that the main bone of contention raised on behalf of the petitioner is that he was not provided with the documents sought for so as to defend his side of the case, which has been refuted by the respondents stating that the petitioner has not sought for any particular documents.

19. In the case on hand, as could be seen from the materials, violation of principles of natural justice is claimed by the petitioner stating that he was not provided with the documents sought for by him at the time of the enquiry. It is not in dispute that the petitioner was provided with a copy of the enquiry report and was called upon to submit his further explanation by issuance of show cause notice. To the said show cause notice, vide letter dated 24.4.03, the petitioner submitted his explanation. A perusal of the said explanation reveals that while the petitioner has given explanation to each and every charge with regard to the findings rendered by the enquiry officer, however, the petitioner has not taken the plea that he had asked for certain documents in the enquiry, which were not provided to him and non-furnishing of the said documents vitiate the enquiry. The petitioner ought to have taken the said plea at the earliest point of time while submitting his explanation on the findings of the enquiry officer, however, the petitioner has not taken any such plea in his explanation. That being the case, it is not open to the petitioner to take the said plea either before the 1st respondent or before this Court at this distant point of time, as the said plea stood foreclosed as the petitioner had accepted the procedure followed in the enquiry. Further, the petitioner has not questioned the procedure adopted in the enquiry by the enquiry officer in the explanation. Such being the case, it does not lie in the mouth of the petitioner to contend that there was bias on the part of the enquiry officer and that he was not provided with the documents, which he had sought for and the same vitiates the enquiry.

20. Further, even if it to be presumed without admitting that the petitioner had asked for certain documents, it is the duty of the petitioner to state the purpose for which he has sought for the said documents. Without stating the reasons for requiring the said document, the petitioner cannot just like that call upon the enquiry

officer to provide him with certain documents. In the case on hand, nowhere it is stated as to the documents which the petitioner requires and the purpose for which the said documents are required to prove his innocence.

21. Once a finding is rendered by the enquiry officer, which has been accepted by the disciplinary and appellate authorities, as stated above, and the petitioner not having not raised the issue of non-furnishing of the requisite documents either before the disciplinary authority or before the appellate authority, this Court, sitting under Article 226 of the Constitution cannot reappreciate the evidence in toto, as if it is sitting in appeal. Once this Court finds that the procedure has been followed in the conduct of the disciplinary proceedings, unless it is shown that a fair conclusion is not reached or that the evidence has not been admitted or inadmissible evidence has been admitted which prevailed upon the disciplinary authority to come to the erroneous conclusion, this Court would not be justified in interfering with the decision arrived at by the disciplinary authority. It is also borne out by record that many documents have been marked by the 2nd respondent as exhibits, which has been taken into account by the enquiry officer while rendering a finding. It is not as if it is a case of no evidence, but a clear case of documentary evidence and in that background, it is not open for the petitioner to contend that either the enquiry has not been conducted in a proper manner or that the enquiry officer has not appreciated the materials in proper perspective while rendering his finding.

22. Though an allegation of bias has been raised by the petitioner on the enquiry authority on the ground that the enquiry officer is the son of the legal advisor of the bank, however, in the absence of the petitioner placing any material to show that any extraneous considerations have influenced either the enquiry officer or the disciplinary authority, there being no lacunae or discrepancy, as pointed out by the Hon'ble Supreme Court, in the conduct of the departmental proceedings, this Court, in exercise of its powers under Article 226 is not inclined to reappreciate the evidence as if sitting in appeal over the appellate decision.

23. Further, it is to be stressed that the Court in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. It has been the consistent view of the

Courts that the nature of evidence required in a disciplinary proceedings is not in the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

24. One of the other pivotal contention raised on behalf of the petitioner is that there is no financial loss to the bank and at best, the delinquencies committed by the petitioner could only be deemed to be delinquencies, which are procedural in nature and the said irregularity does not necessitate inflictment of the maximum punishment of dismissal from service.

25. True it is that the charges levelled against the petitioner are irregularities in not following the rules and regulations and procedural violations in the discharge of duties in the cadre of Branch Manager. However, a perusal of the said charges reveal that though there is no actual loss, which has been said to have been caused to the bank, nevertheless, the act of the petitioner had really put the 2^{nd} respondent bank in peril, as the said irregularities committed by the petitioner goes to the root of the functioning of the petitioner as the Branch Head. Further, it is to be pointed out that it is not the case of the petitioner that the irregularities committed by him have been set at naught by the petitioner obtaining ratification from his superior officers. Merely because the audit authorities have not labelled the said acts of the petitioner as irregularities by raising any audit objections, the same would in no way enure to the benefit of the petitioner as it is borne out by record that the acts done by the petitioner are in violation of the rules and regulations of the bank for which the employer, viz., the 2^{nd} respondent is fully clothed with power to initiate disciplinary proceedings against the petitioner.

26. A perusal of the materials available on record reveal that the petitioner had bluntly refuted the charges. However, a careful perusal of the enquiry report reveal that the enquiry officer has

taken into consideration the materials placed by the 2nd respondent and has held that barring one charge the other charges stood proved. It is the stand of the petitioner that the said one charge, from which he was absolved, relate to a similar delinquency and once the enquiry officer had come to a finding that the said charge has not been made out, the other charges, which are also similar in nature, also should have been held to be not proved.

27. Though such a contention is advanced on behalf of the petitioner, however, this Court is not inclined to accept the said contention for the mere reason that absolving the petitioner from one of the delinquent act cannot be taken as a yardstick for arriving at a finding that the other charges, which are similar in nature, are also not proved. The delinquencies committed by the petitioner are procedural irregularities for which reliance was placed on documentary evidence to bring home the charges. The 2nd respondent, for much of the charges, had placed materials to substantiate the charges, which has been accepted by the enquiry officer and in the absence of materials to prove the lone charge, the petitioner was absolved from the said charge. This clearly shows that the enquiry officer has applied his mind to the materials placed before him and has arrived at a finding, which is just and reasonable and the allegation of bias raised by the petitioner against the enquiry officer also gets negated on this score. Had the enquiry officer been biased against the petitioner, there was no necessity for the enquiry officer to hold one of the charge as not proved. However, the enquiry officer, has consciously adverted to the materials and rendered a finding for each and every charge, which only shows his unbiased attitude and the contention of the petitioner to the contra deserves to be rejected.

28. It is not the case of the petitioner that the acts committed by him are in consonance with the rules and regulations. To meet this end, no material whatsoever has been placed by the petitioner either before the enquiry officer or before this Court as well. However, the enquiry officer, based on the admittance of the petitioner in relation to the charges but also on the basis of the evidence given in the enquiry and other documentary materials has rendered a categorical finding holding the petitioner guilty of the charges. That being the case, the case of the petitioner that there being no financial loss, mere non-following of the rules would not be a ground to inflict major punishment on the petitioner does not merit acceptance.

29. A holistic consideration of all the pleas raised by the petitioner at all stages of the proceedings culminating in the order of dismissal by the 2nd respondent as concurred by the appellate authority reveals that the authorities below, on independent application of mind to the materials placed before them, have

arrived at a finding that the delinquencies alleged against the petitioner stood proved and that the petitioner has not placed any materials to the contra to substantiate his case and in the absence of the same, the punishment was imposed on the petitioner, which has been accepted to be acceptable by the 1st respondent.

30. At the risk of repetition, it is to be stressed that the Court in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceedings is not in the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible. Therefore, this Court, sitting under Article 226 of the Constitution is not inclined to interfere with the findings of the disciplinary enquiry.

31. Once this Court has accepted the findings recorded by the authorities for imposing punishment on the delinquent, the next limb of consideration is the quantum of punishment imposed on the petitioner and its just and reasonableness for which this Court would like to advert to the ratio laid down with regard to interference of the Courts in the matter of punishment under Article 226 of the Constitution, as it is the vehement submission of the petitioner that the irregularities being only procedural, infliction of maximum punishment of dismissal from service is disproportionate to the charges and shocking to the conscience.

32. It has been the consistent view of the Courts that it is always within the domain of the disciplinary authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the delinquency. Only when the punishment is disproportionate and shocking the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In ***Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-

> *"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.*
>
> *21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."*
>
> *(Emphasis Supplied)*

33. In the case on hand, a careful perusal of the entire records right from the conduct of the enquiry, to the passing of the order of dismissal from service and rejection of the appeal by the appellate authority and the 1st respondent, it clearly evidences that there has been proper and independent application of mind on the part of the concerned authorities, who dealt with the case of the petitioner. It is further to be pointed out that the offence committed by the petitioner, though is said to be procedural and irregular, it should not be lost sight of that the petitioner is

part of the banking system, which plays a vital role in the economic development of the country and any deviation from the well established procedures laid down by the employer with regard to its activities would have a direct bearing on the economic development of the country. Keeping the above in mind and appreciating the delinquencies committed by the petitioner in proper perspective, the 2nd respondent has inflicted the punishment of dismissal of the petitioner from service and this Court, sitting in judicial review, is not required to go through the entire materials as if the matter is in appeal before this Court, but only to arrive at a subjective finding as to whether the enquiry has been conducted in a fair and proper manner and whereupon, the punishment has been imposed on independent application of mind. This Court is in consensus with the whole process of enquiry resulting in the infliction of punishment on the petitioner passed by the 2nd respondent and is of the view that the same does not warrant any interference at the hands of this Court. The punishment imposed on the petitioner is also just and reasonable considering the nature of delinquency and no sympathy can flow from this Court for the act of the petitioner. Therefore, the punishment imposed on the petitioner is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

34. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (AD II)

// TRUE COPY //

Sub Assistant Registrar (CS)

To

The Deputy Commissioner of Labour
Appellate Authority under the
Tamil Nadu Shops & Establishments Act
Tiruvanathpuram Road, Tirunelveli.

+1 CC to M/s.MOHAN DASS, Advocate (SR-15037[F] dated 01/04/2021)
+1 CC to M/s.M.E.ILANGO, Advocate (SR-15520[F] dated 08/04/2021)

SMV (CO)
GLN (PA)
RP/11.05.2021/18P/4C.

ORDER IN W.P. NO. 9212 OF 2010
Pronounced on 01.04.2021