

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2022

PRONOUNCED ON: 29.06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.15563 of 2010

G.Vimala

...Petitioner

Vs.

1. Presiding Officer,
Third Additional Labour Court,
Chennai-104.
2. All India Radio and Television, National
Film Development Corporation Employees
Cooperative Thrift and Credit Society Ltd.,
(Rep. by its President),
Television Centre Annexe,
Swamy Sivananda Salai, Chennai-600 005.

Now at : 56, Anugraha Apartments,
F3, I Floor, Singanna Chetty Street,
Chintadripet, Chennai -2.

...Respondents

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent Labour Court relating to its award in I.D.No.192/2005 dated 30.04.2010 and those of the 2nd respondent relating to his order No.CCW/AIR&TV/NFDC/Coop Soc dated 16.09.2003 and quash both the orders and consequently direct the 2nd respondent to reinstate the petitioner in service with backwages, seniority, continuity of service and all other attendant benefits.

For Petitioner : Mr.L.Chandra Kumar
for P.Anbarasan

For Respondent 1 : Labour Court

For Respondent 2 : Mr.R.Viduthalai
Senior Counsel
for L.N.Prakasham

ORDER

The writ petition is filed praying for a writ of certiorarified mandamus challenging the order of the Labour Court/ 1st respondent relating to its award in I.D.No.192 of 2005 dated 30.04.2010, confirming the order of dismissal by the 2nd respondent vide order No.CCW/AIR&TV/NFDC/Coop Soc dated 16.09.2003 and quash both the orders and consequently direct the 2nd respondent to reinstate the petitioner in service with backwages, seniority, continuity of service and all other attendant benefits.

2. The order of the Labour Court is challenged on merits as well as on the premise that the disciplinary proceeding suffered from vice of bias and thus the entire proceedings commencing with enquiry and culminating with the order of dismissal and its affirmation by the Labour Court, is non-est and bad in law.

3. Brief facts:

3.1. The petitioner was appointed as a Clerk on 01.11.1990 in the 2nd respondent/ Society. On 21.01.2002, the petitioner was placed under suspension alleging enquiry into certain charges. Thereafter, on 14.02.2002, the petitioner was issued with the charge memo. A show cause notice was then issued on 20.03.2002 proposing termination of the petitioner on the basis of an ex-parte enquiry report. The same was challenged by way of a writ petition in W.P.No.11540 of 2002 before this Court. This Court was pleased to quash the said show cause notice vide order dated 30.01.2003 in W.P.No.11540 of 2002 and directed that fresh enquiry be conducted.

3.2. Pursuant thereto, fresh charges came to be framed on 19.02.2003 and a practising Advocate was appointed as Enquiry Officer. Three charges were framed against the petitioner vide Charge Memo dated 19.02.2003. For the sake of brevity, the same is summarised below:

a. Charge 1:

That the petitioner had reported late for duty on 18.12.2001, on which day an audit was to be conducted, though the petitioner was allegedly informed to report to duty early i.e., at 9.30 a.m. that day. Normally, duty commences only at 10.30 a.m. The petitioner was however late by more than 2 hours, the delay adversely impacted preparation of the audit report. That the petitioner had reported late for duty without obtaining prior permission.

b. Charge 2:

That the petitioner worked for Videsh Sanchar Nigam Staff Co-operative Thrift and Credit Society Ltd., (hereinafter referred to as "VSNL") since April 2001 as part-time clerk, by

leaving the 2nd respondent/ Society premises after the President/ Vice-President had left. The dual employment would constitute misconduct in terms of Regulation 18(7) and 21(24) of the Service Regulations of the 2nd Respondent Society.

c. Charge 3:

That the petitioner had received a sum of Rs.10,000/- from Mr.Chandiran, Member No.942 towards payment of M.T.Loan which was acknowledged by the petitioner vide receipt No.427. However, the petitioner is alleged to have made out another cash receipt for Rs.5,000/- vide receipt No.447 and had manipulated the original entry of Rs.10,000/- in Receipt No.427 and the day book and chitta books corresponding to receipt No.427 to show receipt of only Rs.5,000/- instead of Rs.10,000/-, which was the original entry, and had thereby misappropriated a sum of Rs.5,000/-.

4.The petitioner submitted her explanation to the charge memo vide letter dated 03.03.2003. However, the same was found to be not satisfactory by the respondents and thus a domestic enquiry was ordered into all the three charges contained in the charge memo dated 19.02.2003. The petitioner on being informed that Mr.Rangarajulu was being appointed as enquiry officer, submitted her objection to the appointment of Mr.Rangarajulu as enquiry officer. The objection was in view of the fact that the said Advocate had appeared against the petitioner in writ petition filed by the 2nd Respondent Society. Despite the same, the 2nd respondent/ Society proceeded with the enquiry. The enquiry officer found that all the 3 charges were proved. Thereafter, on 06.08.2003 another show-cause notice was issued to the petitioner, to which again the petitioner submitted her explanation on 18.08.2003. Pursuant thereto, a second show cause notice was issued on 30.08.2003 followed by an order of termination from service dated 15.09.2003.

5.Aggrieved by the same, the petitioner raised I.D.No.192 of 2005 before the Labour Court. The Labour Court proceeded to hold that all the 3 charges were proved vide its award dated 30.04.2010 and confirmed the penalty of termination. It is this order of the Labour Court which is under challenge in the present writ petition.

6.Heard both sides, perused the materials available on record.

7.The above order of the Labour Court was challenged by the petitioner inter alia on the following grounds:

a. That the petitioner was late only in view of the Local Body Elections and that the President was informed of the same. Further, the respondent had not let in any evidence to establish that the audit was hampered in view of the fact that the

petitioner had reported late to duty.

b. That the petitioner was employed in VSNL was not supported by any evidence other than two cheques in the name of G.Vimala and the same cannot be relied upon in the absence of the authorities of VSNL being examined.

c. It was further submitted that the allegation of misappropriation of remittances made by a member of the Respondent Society, Mr. Chandiran, was made overlooking the deposition and the explanation offered by Mr. Chandiran himself which vitiates the entire proceedings.

d. That the entire proceeding was vitiated by bias inasmuch as the Enquiry Officer had appeared against the petitioner in a writ petition involving the Respondent and thus the proceeding is non-est and a nullity.

8. To the contrary, the following submissions were made by the learned counsel for the respondents:

i) That the petitioner ought to have obtained prior permission for coming late, moroso, when she was aware about the Local Body Elections even prior to 18.10.2001.

ii) That the petitioner was simultaneously working in VSNL and had been compensated as evident from the cheques bearing her name, which act constitutes violation of Rule 18(7) of the Service Rules and Regulation of the 2nd respondent/ Society.

iii) That the petitioner had misappropriated a sum of Rs.5,000/- out of remittance of Rs.10,000/- by one of the members namely, Mr. Chandiran. This would be evident from the fact that the entry was originally made for Rs.10,000/- vide Receipt No.427, which was altered as Rs.5,000/-. The remaining sum of Rs.5,000/- was accounted for 20 Receipts later, vide Receipt No.447 almost a week from the date of remittance acknowledged vide Receipt No.427 by Mr. Chandiran. The above would clearly show that the petitioner had manipulated the record and had misappropriated the funds. Thus, the order of the Appellate Authority does not warrant any interference.

9. I shall now proceed to deal with the legality or otherwise of the disciplinary proceeding and the Labour Court award in respect of each of the charges in seriatim:

9.1. With regard to the 1st charge namely, the petitioner reporting late to duty on 18.10.2001, the petitioner had admittedly informed the President of the fact that there was local body election and that she may be reporting late to duty in view thereof. Although, the charge memo had stated that the petitioner was late by 2 hours, the Management Witnesses (hereinafter referred to as "M.W.") viz., M.W.1-

Ms.N.K.Kothainayaki who is a Clerk-cum-Typist in the 2nd respondent/ Society on being examined stated that the petitioner was late to duty by about half an hour on 18.10.2001. Another management witness stated that the petitioner was late by an hour. There is no dispute that the petitioner had reported late to duty on 18.10.2001. The explanation offered by the petitioner that there were Elections and she had participated and exercised her right and was thus late seems satisfactory if not compelling. M.W.1 had deposed that the petitioner normally reports to office on time/ promptly. The relevant portion of the deposition of M.W.1 is extracted below:

"P.O.to M.W.1 : Will C.S.E. come to office promptly on time?

M.W.1 : She is having office keys and she will come.

P.O. to M.W.1 : Can you say whether she came late on 18.10.2001?

M.W.1 : She was late by about half an hour."

9.2. It is apparent that the above incident when the petitioner reported late to duty was a solitary incident and even according to the 2nd respondent/ Society was not a regular feature. As a matter of fact, the Labour Court while finding that the above charge has been proved had stated that the same may not constitute a major offence as is the case with regard to charges 2 and 3.

9.3. Taking into account the circumstances cumulatively, it appears to me that the above charge viz., reporting late to duty was a solitary incident and the explanation offered also appears to be satisfactory. Further, the fact that she had informed the President and another officer by name Aadalarasu and the fact that she was admittedly prompt to duty normally, when taken into account cumulatively would show that the charge of reporting to duty belatedly for a single day without prior permission does not by itself warrant punishment of termination nor can it be treated as constituting a major offence. In any view as stated above, the explanation offered for being late appears satisfactory.

10. Now, with regard to the 2nd charge, viz., that of dual employment affirmed by the Labour Court rejecting the petitioner's explanation that she had never worked for VSNL nor was she compensated for rendering any job/ service and that she used to occasionally visit the said Society since her relative was working there. The Labour Court proceeded to affirm the order with regard to the 2nd charge primarily on the basis of 2 cheques allegedly issued by VSNL bearing the name of the petitioner viz., G.Vimala. It was further found that both the

cheques have been encashed. In other words, the primary evidence/ material which formed the basis to conclude that Charge 2 of being employed with VSNL was that 2 cheques dated 03.08.2001 and 03.09.2001 were issued by VSNL bearing the name of the petitioner. From the above fact, the following inferences were drawn:

- a. That the petitioner had worked for VSNL.
- b. That VSNL had engaged the petitioner's service.
- c. The compensation/ salary was paid by VSNL to the petitioner vide cheque dated 03.08.2001 and 03.09.2001.
- d. Vimala referred to in the said cheque was the petitioner.

10.1. Importantly, the enquiry officer found that though the signatures of G.Vimala in the above 2 cheques are in different styles, however, there was similarity in the manner in which the particulars in the cheques were written, such as date, amount, name, figures and words. It was found that the strokes in words and figures tallies with the handwriting of the petitioner and that from a mere inspection and comparison of the above documents the similarities were visible to the naked eye.

10.2. It is difficult to agree with the finding of the enquiry officer, which is confirmed by the Labour Court for the following reasons:

i) None of the management witnesses who were examined had even stated that they were aware of the fact that the petitioner used to visit the office of VSNL daily/ regularly let alone/ much less work simultaneously with VSNL except to state that the petitioner used to leave the office of the 2nd respondent/ Society around 2.00 p.m. However, it was also stated that they did not know the purpose for which she used to leave the office.

"P.O. to M.W.1 : Do you know the charge against her for dual employment.

M.W.1 : She will go during lunch hours. Only that I know. Some times she may go at 2 o' clock or 3 o' clock not fixed hours.

P.O. to M.W.1 : During working hours, to go out of work places is it necessary to obtain permission?

P.O. to M.W.1 : President may not be available whole day. He will come in the morning sign the cheques and go. If I want to go out I may take permission from President or Vice-President if they are available.

P.O. to M.W. : You say the C.S.E. will go out. For what purpose she will go out?

M.W.1 : I don't know for what purpose she will go."

10.3. The M.W.1 further deposed that if the petitioner had left office, the same would be recorded in the movement register

and that the register was being scrutinized by the President or the Vice-President on a regular basis as would be evident from the following:

"D.R. to M.W.1 : Do you know that the movement register has to be maintained in the society to record the movement of the staff.

M.W.1 : Yes

D.R. to M.W.1 : Whenever yourself or any other staff go out of your office it will be recorded in the movement register. Is it not?

M.W.1 : Yes

D.R. to M.W.1 : The President or Vice-President will scrutinize the movement register often is it not?

M.W.1 : Yes"

10.4.M.W.2 had stated that the petitioner would leave office around 2.00 p.m. and then would return in an hour or two. M.W.2 had further stated that the petitioner's brother was working in VSNL and there is a canteen in the office of VSNL which the staff of the 2nd respondent/ Society used to visit. The relevant portions of the deposition is extracted below:

"D.R. to M.W.2 : Are you aware of the CSE's relatives working in VSNL Society and TV Station adjoining your office?

M.W.2. : I am aware of her brother working in the TV Station.

D.R. to M.W.2 : Are you aware of the canteens functioning in the VSNL office and TV Office?

M.W.2 : Yes.

D.R. to M.W.2 : Your staff will go to these canteens, is it not?

M.W.2 : Yes."

10.5.M.W.3 who is the Director of the Society had stated that the petitioner used to leave office in the afternoon around 2.00p.m. after the President had left. He had also deposed that the petitioner was not issued any memo for leaving the office. The relevant portions are extracted hereunder:

"D.R. : You stated that the C.S.E. used to go away by 2.00 p.m after the President leaves the Society. If it is so, being a Director, can you say how many times she was served with a memo for that.

M.W.3 : No memo was given."

10.6.The above deposition by the "Management witnesses" if viewed collectively would show/ indicate that the conclusion that the petitioner was working with VSNL was made on a series of assumptions namely:

i) That the petitioner who is alleged to leave the office at 2.00 p.m. and to return to office after an hour must be assumed

to go and work in the office of VSNL.

ii) That she used to work for VSNL between 2.00 p.m until she returned to the respondent office.

iii) That the two cheques issued by VSNL was in favour of the petitioner.

iv) That the cheque was by way of compensation for the service/ work rendered by the petitioner.

10.7. None of the these assumptions are backed by any evidence other than the cheques, importantly, none of the witnesses had confirmed that the petitioner visited VSNL on a daily/ regular basis nor were they aware of the fact that the petitioner worked for VSNL. The author of the cheque viz., no authority from VSNL was examined instead strangely the enquiry officer has given an expert opinion on handwriting. Importantly, VSNL has not confirmed that the cheques were issued in favour of the petitioner nor that petitioner worked for VSNL. It may be relevant to note that Courts have consistently held that if a fact is to be established on the strength of any document it is imperative to produce the author of the document or his affidavit ought to be filed. In this regard, it may be relevant to refer to the following judgments, the relevant portions of which are extracted hereunder:

i) L.I.C. of India and another vs. Ram Pal Singh Bisen reported in 2010 III L.L.J. 97:

"31. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court, contents of the document cannot be proved by merely filing in a Court. "

(emphasis supplied)

ii) Cholan Roadways vs. G.Thirugnasambandam reported in (2005) 3 SCC 241:

29. In Bareilly Electricity Supply Co. Ltd. vs. workmen and reported in [(1971) 2 SCC 617] this Court was seized with a different question.....

"14. ... No doubt the procedure prescribed in the Evidence Act by first requiring his chief examination and then to allow the delinquent to exercise his right to cross-examine him was not followed, but that the enquiry officer, took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well-recognized rules of procedure. In these circumstances it was observed at p. 264:

".....

But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used..... If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order 19, Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except insofar as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced...."

(emphasis supplied)

11. In the present case, it appears to me that there is no legal evidence to support the above conclusion except a series of assumptions which is contrary to the evidence let in by the Management witnesses themselves. Further, the Respondent society being a registered cooperative is subject to Government audit and that part or full time appointment could not be made without recruitment. In the circumstances, I find that the order of the Labour Court insofar as it confirms Charge 2 is unsustainable.

12.1. Coming to the 3rd charge viz., that there was manipulation/ interpolation of books of accounts and a sum of Rs.5,000/- was misappropriated by the petitioner, the Labour Court found the charge to be proved by finding that on 14.08.2020, Receipt No.427 was prepared for Rs.10,000/- by the petitioner, the same was however altered as Rs.5,000/- and the said alteration was also carried out in the Chitta and Cash books. Further, the remaining sum of Rs.5,000/- was entered vide Receipt no.447 after a week. The Labour Court found that there was a difference of 20 receipts between Receipt No.427 when the

1st Rs.5,000/- was credited in favour of Mr.Chandiran and Receipt No.447 when 2nd Rs.5,000/- was credited to the account of Mr.Chandiran. It was thus concluded that the petitioner has misappropriated the difference amounting to Rs.5,000/- and thereafter restored.

12.2. The explanation that was offered by the petitioner throughout the disciplinary proceeding and also the Labour Court was that Mr.Chandiran after remitting Rs.10,000/- had requested the petitioner to return Rs.5,000/- as he was informed that his son met with an accident. The above fact was confirmed by Mr.Chandiran himself on 22.03.2002 in writing wherein it was stated that he went to the Cooperative Society to pay his loan and remitted Rs.10,000/- however, on being informed that his son met with an accident, had requested the petitioner to only account for Rs.5,000/-. Importantly, Mr.Chandiran who was examined as the defense witness, confirmed in his deposition that whatever was stated vide letter dated 22.03.2002 was true. The relevant portion of the enquiry proceedings is extracted below:

"D.R. to D.W.1 : What is your name and designation?
D.W.1 : I am M.Chandiran working as Peon in
Superintending Engineer's Office, CCW, AIR & TV.
D.R. : (Pointing out to letter dated
22.03.2002) is this letter written and signed by you.
D.W.1 : My handwriting is not good. Another
person wrote this for me and I have signed.
D.R. to D.W.1. : Do you say whatever is stated in this
letter is true.
D.W.1 : Yes."

12.3. That being the case, it appears to me that there is no basis to hold that the petitioner had misappropriated. Thus, all the three charges in my view cannot be sustained.

13. With regard to the second limb of the petitioner's submission that the entire proceedings was vitiated by bias. Though, the learned counsel for the respondents had submitted a number of decisions to suggest that the enquiry conducted by an Advocate who had appeared earlier for the Management by itself would not vitiate the proceedings and that the petitioner having participated in the enquiry must be understood to have waived the plea of bias. I am of the view that the above exercise would be purely academic in the light of the view that I have taken on the merits of the matter. Therefore, I do not propose to examine the above aspect of the matter.

14. In view of the above, the writ petition is allowed, the order of the Labour Court is set aside with a direction that the

petitioner be reinstated with continuity of service and other attendant benefits. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Presiding Officer,
Third Additional Labour Court,
Chennai-104.
2. The President,
All India Radio and Television, National
Film Development Corporation Employees
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+1cc to Mr.P.Anbarasan, Advocate, S.R.No.41356

+2cc to Mr.L.N.Praghasham, Advocate, S.R.No.41152

W.P. No.15563 of 2010

GPL(CO)
RGA(19/07/2022)