IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11 / 04 / 2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.3738 OF 2005

S.Ganesan (Deceased)
2.Ameetha Ganesan
3.Bhavana Ganesan
4.S.Kamala ...Petitioners
(Petitioners 2 to 4 substituted as legal heirs in the place of deceased petitioner as per order dated 17.02.2011 in WPMP No.125/2011)

Vs.

1.Special Deputy Commissioner of Labour
(Appellate Authority under Tamil Nadu Shops and Establishment Act)
D.M.S. Compound, Teynampet,
Chennai - 600 006.

2.General Manager
Indian Overseas Bank Ltd.,
"Habeeb Towers"
756, Anna Salai,
Chennai - 600 002.

3.The Chairman
Bharat Overseas Bank Ltd.,
Habeeb Towers,
756, Anna Salai,
Chennai - 600 002.

4.Indian Overseas Bank
Rep. by its Chairman
Anna Salai,
Chennai - 600 002.
R4 - impleaded as per order dated 18.02.2013 in WPMP No.31/2013 in WP No.3738/2005) ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 31.08.2004 in T.S.E.No.I/18/2002 and consequently direct the respondent No.2 and 3 to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

For Petitioners : Mr.Balan Haridas

For Respondent-1: Mr.C.Selvaraj
Government Advocate

For Respondents
2 and 3 : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

O R D E R

Challenging the order of the Special Deputy Commissioner of Labour, the Appellate Authority under Tamil Nadu Shops and Establishments Act, 1947, Chennai, in TSE No.1/18/2002 dated 31.08.2004, the petitioner has preferred the above writ petition.

2. The petitioner joined the third respondent - Bank as Clerk in the year 1980 and subsequently promoted to various posts. While he was working as a Branch Manager, he resigned from service during 1995 and joined in Bank of Ceylon as Assistant Vice - President. While working there, he applied for the post of Credit Officer / Forex Officer in the respondent / Bank. He was selected and joined the respondent Bank on 09.10.1996. In February 1997, he was transferred as Branch Manager in the proposed Pune Branch. Again he was transferred on 31.03.1999 from Pune to New Delhi Branch and was relieved from Pune on 03.04.1999. He was expected to join at New Delhi on 05.04.1999. He was directed to vacate the flat at Pune and he was not even given normal joining time. He became sick and applied for medical leave. On 16.06.1999, a charge sheet was issued to him containing 18 charges. The charges were built up with malafide intention. The enquiry was scheduled on 28.08.1999. On receipt of the enquiry notice, he sent a letter dated 23.08.1999 expressing his inability to attend the enquiry owing to sickness. Neither the Disciplinary Authority nor the Enquiry Officer replied the request, but on the other hand,

conducted an exparte enquiry on 28.08.1999 and 29.08.1999 and closed the same. He was not given any opportunity to cross examine the witnesses examined on the side of the Bank on the foisted charges. The enquiry was conducted in violation of principles of natural justice and it was not conducted fairly and properly. He came to know about the conduct of the enquiry in which he received the enquiry report. The Enquiry Officer held the charges 1 to 12 and 14 to 18 were proved. Thereafter, he was dismissed from service. He filed an appeal before the first respondent, which was also dismissed.

3. Resisting the allegations, respondents 2 and 3 filed a counter affidavit. It was stated that in March 1999, he was transferred and posted to New Delhi Branch from Pune Branch and he was relieved from Pune on 03.04.1999 with a direction to report at New Delhi on 05.04.1999. In May 1999, there was an inspection by the Audit Department at Pune Branch, wherein various irregularities committed by the petitioner during the course of discharge of his duties as Branch Manager at Pune Branch were found. On 12.06.1999, a charge sheet was issued levelling 18 charges. The petitioner gave a reply to the charge sheet denying the charges. Since the explanation was not satisfactory, he was asked to appear for the enquiry on 14.07.1999. But he did not appear and he also failed to appear for enquiry on 21.07.1999, 02.08.1999 and 16.08.1999. The enquiry was then finally posted on 28.08.1999. Since the petitioner failed to appear for the enquiry, it was held in the absence of the petitioner on 28.08.1999 and 29.08.1999. A copy of the enquiry report was furnished to the petitioner and after giving opportunity to show cause against the findings, he was awarded with the punishment of dismissal on 16.10.1999. The appeal preferred by the petitioner was also dismissed.

4. The petitioner challenged the order of dismissal by way of an appeal under Section 41(2) of the Tamilnadu Shops and Establishments Act, 1947. In the course of the trial, the petitioner examined himself and marked 89 documents to substantiate his evidence. On the side of the respondent / Bank, no oral evidence was adduced. But, 59 documents were marked with the consent of the petitioner. The Authority upheld the enquiry as well as the findings of the Enquiry Officer. The Appellate Authority has analysed each and every charge and given justification for upholding the order of dismissal.

5. According to the respondents, the appeal itself is not maintainable as no cause of action had arisen for the petitioner to maintain the appeal at Chennai. At the time of

dismissal, the petitioner was transferred from Pune to New Delhi Branch. The State of Maharashtra and New Delhi have their own Shops and Establishments Act. Therefore, the appeal filed under the Tamil Nadu Shops and Establishments Act, 1947, is not maintainable and without jurisdiction. The Appellate Authority has considered the various charges and analysed each of the factual finding and in the absence of any perversity in arriving at the findings, the writ petition against the same is not maintainable and therefore, no interference is warranted against the order of the Appellate Authority.

6. The learned counsel for the petitioner would contend that the petitioner was not given fair opportunity to defend his case. The findings on the basis of exparte enquiry is illegal and the punishment imposed for the procedural lapses is highly disproportionate. The procedural lapses will not amount to gross misconduct and that the request made by the petitioner on account of his signatures was not at all considered. The findings of the Enquiry Officer, on the foist of the charges is perverse and illegal. The petitioner is entitled to reinstatement and the consequential attendant benefits.

7. The learned counsel for the petitioner would rely on a judgment of the Hon'ble Supreme Court in H.D.SINGH VS. RESERVE BANK OF INDIA AND OTHERS [1985 (4) SCC 201] for the proposition that an employer, who should set a model for other employees being a prestigious institution, behaved towards its employees in a manner opposed to law. The employer had deliberately indulged in unhealthy labour practice by transferring the petitioner and without even providing normal joining time.

8. The learned counsel for the petitioner would rely on a judgment of a Division Bench of this Court in MANAGEMENT OF INDIAN BANK REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR VS. GENERAL MANAGER, INDIAN BANK [2001 (2) LLN 405] to buttress his argument that in order to bring the petitioner under the decree of misconduct that he had failed to take all possible steps to ensure and protect the interest of the Bank at all times and failed to discharge his duties with utmost integrity, honesty, devotion and diligence. But, in the case of the petitioner, when a meritorious service and the charges foisted against him shows that he had committed only procedural lapses and that he has got clean record of service. Therefore, the punishment imposed is disproportionate and he shall be paid compensation proportionate to the service left over. He would rely on computation of his compensation equivalent to 3.33 years' salary on the basis of the last pay and allowances, which

would be reasonable in lieu of reinstatement, as held by the Hon'ble Supreme Court in O.P.BHANDARI VS. INDIAN TOURISM DEVELOPMENT CORPORATION LTD. AND OTHERS [1986 (4) SCC 337]. In so far as the denial of fair opportunity and violation of principles of natural justice embodied in Article 311(2) which vitiated the enquiry and rendered the dismissal order invalid, he relied on a judgment of the Hon'ble Supreme Court in KASHINATH DIKSHITA VS. UNION OF INDIA AND OTHERS [1986 (3) SCC 229] wherein the Hon'ble Supreme Court has categorically observed that reasonable opportunity should be given to the delinquent to face the departmental enquiry and to peruse voluminous documents. Non-supply of documents and denial of opportunity vitiates the enquiry.

9. Further, the learned counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court in UNITED PLANTERS ASSOCIATION OF SOUTHERN INDIA VS. K.G.SANGAMESWARAN AND ANOTHER [1997 (4) SCC 741] for the proposition of denial of opportunity amounts to violation of principles of natural justice before the Appellate Authority. The Appellate Authority has jurisdiction to record evidence and if the respondent / Management refused to produce the records called for it will amount to violation of principles of natural justice. The parties are entitled to cure the defects by adducing additional evidence in support of their case. Even though the respondent was directed to produce documents, he did not produce and thereby committed illegality in not allowing the Appellate Authority to consider the relevant materials which resulted in failure of justice and violation of principles of natural justice. Therefore, the punishment order should be set aside.

10. The learned counsel for the petitioner also relied on a judgment of the Hon'ble Supreme Court in KAILASH NATH GUPTA VS. ENQUIRY OFFICER (R.K.RAI) ALLAHABAD BANK AND OTHERS [2003 (9) SCC 480] that the Courts have power to interfere with the quantum of punishment and it can be compensated in terms of money.

11. During the pendency of the writ petition, the writ petitioner died and his legal heirs are substituted.

12. Per contra, the learned counsel appearing for the respondent Bank would contend that the appeal itself is not maintainable for want of jurisdiction and that the scope of judiciary review is limited to legal errors, procedural errors, leading to injustice, manifest, perversity, no evidence, non-application of mind etc., as held by the Hon'ble Supreme Court in DEPUTY GENERAL MANAGER AND OTHERS VS. AJAI KUMAR SRIVASTAVA

[2021 SCC ONLINE SC 4] and that the judgment of this Court in PUNJAB NATIONAL BANK VS. S.C.GUPTA AND OTHERS [1989 (I) LLN 504] with regard to the maintainability of appeal and the judgment of the Hon'ble Supreme Court in CHAIRMAN AND MANAGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS VS. P.C.KAKKAR [2003 (4) SCC 364] with regard to the requirement of highest standard in respect of bank employees. Further, he would contend that the petitioner has failed to exercise the appeal remedy and therefore, the writ petition is not maintainable. In cases under Section 41(2) of the Tamil Nadu Shops and Establishments Act, the Authority has only two options viz., to allow the appeal or to dismiss the appeal. He can either uphold the dismissal order or set aside the dismissal order and thus, he has no power to modify the punishment. The Authority himself has convinced based on the admission made by the petitioner that there is reasonable cause and that the enquiry conducted was fair and proper, has dismissed the appeal. There is no reason to revisit the same.

13. Heard the submissions made on either side and perused the materials available on record.

14. In DEPUTY GENERAL MANAGER VS. AJAI KUMAR SRIVASTAVA [2021 SCC ONLINE SC 4], it is observed as under:

> "23. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in State of Tamil Nadu Vs. T.V. Venugopalan and later in Government of T.N. and Another Vs. A. Rajapandian4 and further examined by the three Judge Bench of this Court in B.C. Chaturvedi Vs. Union of India and Others5 wherein it has been held as under:
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> "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 enquiry, 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] 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."

24. It has been consistently followed in the later decision of this Court in Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya and recently by the three Judge Bench of this Court in Pravin Kumar Vs. Union of India and Others.

25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

26. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine: (i) whether the enquiry was held by

the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

27. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

28. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

43. Before we conclude, we need to emphasize that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and 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. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24 th July, 1999 confirmed in departmental appeal by order dated 15th November, 1999."

15. In the instant case, the petitioner was given a charge memo and he submitted his explanation. Not satisfied with the explanation, the Management has decided to continue the enquiry proceedings. The enquiry was fixed on 14.07.1999, for which, notice was sent to the petitioner to Chennai as well as Pune address. However, the petitioner did not turn up for enquiry on 14.07.1999. Again it was adjourned to 21.07.1999 and the Enquiry Officer sent telegram, enquiry notice by registered post with acknowledgment to both Chennai and Pune address of the petitioner advising him to appear on 02.08.1999. Even on 02.08.1999, he did not appear. Again, a notice was sent for enquiry on 28.08.1999 to which also the petitioner did not appear. Therefore, the enquiry was conducted in ex parte on 28.08.1999 and was concluded on 29.09.1999. The petitioner did not follow up the matter thereafter. He said to have submitted a letter dated 23.08.1999 to the Disciplinary Authority with a copy to the Enquiry Officer seeking adjournment due to his ill-health. It is incumbent on him to produce medical certificates to prove his illness and also to follow up the future date of enquiry. Whereas, he would take shelter under the pretext of non-reply to his request dated 23.08.1999 by the Enquiry Officer. He would further state that he came to know of the ex parte enquiry only when he received the enquiry report dated 12.06.1999. Even thereafter, he did not ask for reopening of the enquiry. But submitted his explanation to the enquiry report. This shows that the respondents have followed the procedure contemplated in law and provided opportunity to the petitioner to defend his case, which he failed to avail. He has not raised any prejudice before the Enquiry Officer or Disciplinary Authority over the denial of opportunity in time. Mere making allegation that opportunity was denied is not bonafide, but the incumbent shall take appropriate steps to rectify and redress his grievances. The enquiry report was forwarded to him and he has submitted his objection to the enquiry report and thereafter, the order of dismissal was passed.

16. Therefore, I do not find any procedural lapses in the conduct of enquiry to interfere with the same. He filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act. Before the Appellate Authority, he was given opportunity to examine himself as a witness and to produce documents. On the side of the respondents also, documents were marked with the consent of the petitioner. But, no evidence was adduced. During cross examination, the petitioner would admit his misconduct to several charges. The Appellate Authority after providing opportunity to adduce additional evidence and marking documents considered and analysed each and every charge and

found the findings of the Enquiry Officer is based on reasons. The petitioner, in fact, would admit during cross examination many of the lapses committed by him. As held by the Hon'ble Supreme Court in the above mentioned judgment in Ajai Kumar Srivastava's case (cited supra) in banking business, absolute devotion, integrity and honesty is a sine qua non for every bank employee. The petitioner though claimed that he was sick, has failed to maintain absolute integrity in obeying the orders of the respondents and joining duty in time. Further, the evidence categorically shows that he failed to maintain absolute integrity in conformity with the rules and regulations of the Bank and failed to act properly in protecting the interest of the Bank. The materials go to show that the findings of the Enquiry Officer and the Appellate Authority should also on the basis of the admission made by the petitioner himself is correct and justified. Thus, on merits and also on the procedural aspect, the petitioner has not made out a case for interfering with the punishment imposed on him.

17. In so far as the proportionality of the punishment is concerned, under Section 41(2) of the Tamil Nadu Shops and Establishments Act, the Authority if finds a reasonable cause set out and opportunity was given and the finding that the enquiry is supported by satisfactory evidence to prove the misconduct can uphold the decision and if there is any procedural violation and that the finding is not supported by satisfactory evidence, can set aside the punishment. Therefore, as contended by the learned counsel for the petitioner, the punishment of dismissal is disproportionate and the petitioner shall be imposed with a lesser punishment and that compensation in lieu of the same is not tenable.

18. In so far as the maintainability of the appeal is concerned, the petitioner was transferred from Pune to New Delhi and he has not joined at New Delhi even after he was relieved from Pune on 03.04.1999. In so far as the administrative expenses are concerned, he should have joined duty at New Delhi on and after 03.04.1999, after he was relieved from the office of Pune. Had he joined in New Delhi office, he can avail the jurisdiction of New Delhi. In so far as the lapses and irregularities found by the Audit team at Pune Branch of the respondent Bank, the petitioner is entitled to avail the jurisdiction of Maharashtra State. Admittedly, both Maharashtra State and New Delhi have their own statutes of Shops and Establishments Act. The petitioner should have availed his legal remedy only under the respective Shops and Establishments Act either at Pune or at New Delhi. The appeal filed before the first respondent under Tamil Nadu Shops and Establishment Act is

not maintainable for the reason that it is extended to the City of Madras and the Municipalities within the Tamil Nadu State. Only because the petitioner is a resident of Tamil Nadu and that the respondent has Branch in Tamil Nadu, the petition is not maintainable in Tamil Nadu. The cause of action had arisen for the petitioner at Pune much less in New Delhi. As per the judgment of this Court in Punjab National Bank's case (cited supra) the State enactment where there cause of action arose only will apply and it cannot be based on place of residence. Therefore, the appeal preferred by the petitioner under Section 41(2) of the Tamil Nadu Shops and Establishments Act, is not maintainable. The questions of law with regard to jurisdiction can be raised at any point of time. Therefore, even though it is not raised before the Appellate Authority, it can be raised before this Court in the writ proceedings.

19. Even assuming that the appeal is maintainable on the basis of place of residence, on merits, it is found that a decision is justified and not inclined to interfere with the same.

20. In the result, the writ petition merits no consideration and accordingly, stands dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

TK

To

1.Special Deputy Commissioner of Labour
(Appellate Authority under Tamil Nadu
Shops and Establishment Act)
D.M.S. Compound, Teynampet,
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+1 CC to Mr.T.S. Gopalan & Co, sr 24670.
+1 CC to Mr. Balan Haridas, Advocate sr 24965.

WP NO.3738 OF 2005

KV(CO)
SP(01/06/2022)