



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.04.2022

Pronounced on : 06 .06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.29443 of 2011 and 2287 of 2012

1. Union Bank of India
Central Office,
239, Vidhan Bhavan Marg
Nariman Point
Mumbai 400 021
rep. By its General Manager

.... Petitioner in W.P.No.29443/2011

2. Mohamed Haneef Sait

.... Petitioner in W.P.No.2287/2012

Vs.

1. The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, Chennai

2. Mohamed Haneef Sait
No.42/2 Cemetery Road
Washermanpet, Chennai - 600 021

...Respondents in W.P.No.29443/2011

1. The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, I Floor, B Wing, No.26,
Haddows Road,
Shastri Bhavan, Chennai 600 006.

2. The General Manager
Union of India, Central Office,
239, Vidhan Bhavan Marg
Nariman Point
Mumbai 400 021

...Respondents in W.P.No.2287/2012

Prayer in W.P.No.29443 of 2011: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st respondent



in I.D.No.33/2009 and quash its award dated 14.07.2011 and pass orders.

Prayer in W.P.No.2287 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus and after calling for the records from the 1st respondent in I.D.No.33/2009 dated 14.07.2011 insofar as not holding the punishment of dismissal imposed by the disciplinary authority of the 2nd respondent bank as confirmed by the appellate authority of the 2nd respondent bank and consequently direct the 2nd respondent bank to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

In W.P.No.29443 of 2011

For Petitioner	: Mr.Ananda Gopalan for M/s.T.S.Gopalan and co.,
For Respondent-1	: Tribunal
For Respondent-2	: Mr.Balan Haridass

In W.P.No.2287 of 2012:

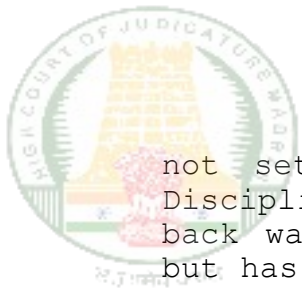
For petitioner	: Mr.Balan Haridass
For Respondent -1	: Tribunal
For Respondent - 2	: Mr.Ananda Gopalan for M/s.T.S.Gopalan and co.,

C O M M O N O R D E R

These writ petitions are filed against the impugned order of the Tribunal cum Labour Court in I.D.No.33 of 2009 by both the management and the employee who are aggrieved by the order of the Labour Court. Since both the writ petitions filed by the management and the employee is against the award of the Labour Court in I.D.No.33 of 2009 , the same is disposed of by way of an common order.

2. For the sake of convenience Mohammed Haneef Sait who is the petitioner in W.P.No.2287 of 2012 and second respondent in W.P.No.29443 of 2011 is referred to as the petitioner and the Union Bank of India who is the petitioner in W.P.No.29443 of 2011 and the second respondent in W.P.No.2287 of 2012 is referred to as the respondent.

3. The petitioner has filed this writ petition in 2287 of 2012 challenging the order of the Tribunal insofar as it does



not set aside the punishment of dismissal imposed by the Disciplinary Authority and reinstate the petitioner with full back wages, continuity of service and other attendant benefits but has modified the same into one of compulsory retirement with superannuation benefits. While the respondent bank had filed this writ petition in W.P.No.29443 of 2011 challenging the very same order of the Tribunal insofar it has modified the order of dismissal into one of compulsory retirement with superannuation benefits.

4. Brief Facts:-

The petitioner joined the services of the respondent bank on 26.07.1978. During the year 2001 the petitioner was working as Daftry in the S.S.I, T.S.K. Nagar, Chennai Branch of the respondent bank. The petitioner was thereafter working with Ennore Branch of the respondent Bank. While so, a show cause note dated 01.02.2006 was issued with reference to an alleged incident which occurred on 07.06.2001. The show cause notice alleged that while the petitioner was working as Daftry in the T.S.K. Nagar Branch he was entrusted with 6 cheques relating to the extension counter attached to T.S.K.Nagar Branch for being handed over to National Clearing through the service branch of the respondent bank. However, the 6 cheques went missing, out of which 3 cheques issued by Ratan Tata Charitable Trust in favour of Madras Medical Mission in all amounting to Rs.1,45,000/- were encashed at Lakshmi Vilas Bank, Bangalore. It was alleged that the petitioner after collecting the above cheque had handed them over to one Masthan fraudulently for monetary consideration. It was also reported that CB pass book which is used for getting acknowledgment from the service branch was also missing.

5. The petitioner submitted his explanations pointing out that he was not an employee of T.S.K.Nagar Branch as alleged, instead was working with SSI, T.S.K.Nagar Branch. The petitioner denied that no cheque was entrusted to the petitioner for being handover to the service branch on 07.06.2001 as alleged.

6. It was submitted by the petitioner that he was not aware about the CB Pass book. Not convinced with the explanations of the petitioner, a charge sheet dated 10.05.2006 was issued stating that the allegation as set out in the show cause notice of the petitioner amounts to the following gross misconduct and minor conduct:

Gross Misconduct:

- (i) Wilful damage or attempt to cause damage to the property of the Bank of any of its customers.
- (ii) Doing any act prejudicial to the interest of the bank or gross negligence involving or likely to involve the bank in serious loss.
- (iii) Unauthorized disclosure of information regarding the



affairs of the Bank of any of its customers or any other person connected with the business of the bank which is confidential.

Minor Misconduct:

(i) Breach of any rule of business of the bank or instruction for running of any department.

7. The petitioner offered his explanations on 18.05.2006 and denied all the charges. A domestic enquiry was ordered in which the petitioner participated and during the course of the domestic enquiry the respondent bank examined 2 witnesses viz., K.G.Muniraj, Accountant and Mr.V. Nagarajan, Chief Manager (Vigilance), both the witnesses were also cross examined. The petitioner examined himself as a witness on his side and was also cross examined by the respondent bank.

8. Thereafter the Disciplinary Authority issued a 2nd show cause notice dated 25.11.2006 enclosing the enquiry report wherein it was found that the charges against the petitioner were proved. The Disciplinary Authority while stating that he concurs with the findings of the Enquiry Officer proposed the following punishment viz.,

a. Reduction of two increment with cumulative effect for the misconduct of wilful damage.

b. Punishment of dismissal without notice for doing the act prejudicial to the interest of the bank.

c. Punishment of reduction of one increment with cumulative effect in respect of unauthorized disclosure of information regarding the affairs of the bank.

d. Punishment of stoppage of one increment for a period of six months without cumulative effect in respect of the breach of any rule of business of the bank.

9. The Disciplinary Authority rejected the contention of the petitioner and confirmed his proposal.

10. Aggrieved by the same the petitioner preferred an appeal and the Appellate Authority after giving personal hearing confirmed the order of the Disciplinary Authority. The petitioner challenged the order of the Disciplinary Authority before the Labour Court. The Labour Court after finding that the petitioner was guilty of misconduct however found that capital punishment was disproportionate and shocking to the conscience as the misconduct committed was due to some bad impulse on the spur of the moment and thus modified and reduced the punishment to compulsory retirement with superannuation benefits.

11. The order of the Tribunal is under challenge by the petitioner on the following grounds:

a. The Tribunal ought to have seen that there was no



evidence other than the statement of K.Muniraj to show that the petitioner was in fact entrusted with the cheques.

b. The statement of Masthan cannot be relied upon as it does not even contain his signature

c. While relying on the statement of Masthan, the petitioner has been denied the opportunity to cross examine him nor is there any other evidence to show encashment of the cheque by the petitioner.

d. That the charge memo was issued after a delay of 5 years after the occurrence of the incident.

In view of the same, it was submitted that the order of the Tribunal insofar as it finds the petitioner guilty of misconduct is unsustainable and arbitrary.

12. To the contrary it was submitted by the respondent bank that the Labour Court having found that the petitioner was guilty of misconduct ought not to have interfered with the punishment by reducing it to compulsory retirement with superannuation benefits.

13. Heard both sides and perused the materials on record.

14. It has been found by the Disciplinary Authority, Appellate Authority as well as the Labour Court that there is no reason to disbelieve the fact that cheques were entrusted to the petitioner for being handed over to the other Branch. In his statement though not signed Masthan had stated that the petitioner was in requirement of money to take care of the medical expenses of his wife which appears to be corroborated by the petitioner's own admission that his wife was not well and he was in need of funds to take care of her medical expenses. It is not the submission of the petitioner that Muniraj who had submitted that he had handed over cheques to the petitioner had any grievance or enmity to falsely implicate the petitioner.

15. It thus appears that this is not a case where there is a complete lack of evidence, in other words no evidence at all for this Court to interfere with the finding that the petitioner was guilty of misconduct which is alleged and found by the lower authorities to be proved. Assuming as suggested by the counsel for the petitioner a different conclusion can be arrived at as Masthan was not produced/examined nevertheless the scope of judicial review of the Tribunal order being limited and narrow would warrant interference only when the finding of the Tribunal are shown to be perverse and not merely because a different view is possible. Hence, I find no reason to interfere with the finding of the fact of the Tribunal. It is trite law



that a finding of fact of a Tribunal of fact of a Tribunal shall not be disturbed under Article 226 unless it is shown to be perverse which is not the case here.

16. Now coming to the question of the respondent's grievance insofar as the punishment was modified to compulsory retirement with superannuation benefit. In this regard, it may be relevant to refer to the the findings of the Labour Court in relying the punishment is extracted below:-

"Regarding the punishment imposed I am of the considered view that petitioner in having had to quit the service after having rendered 28 years of service with a capital punishment without entitlement for any benefits in lieu of superannuation the punishment is becoming grossly disproportionate and shocking to the conscience of the Court, though for a misconduct committed due to some bad impulse at the spur of the moment and therefore the same needs to be modified and reduced to Compulsory Retirement with all superannuation benefits."

17. This Court under Article 226 of the Constitution of India normally would not interfere with the quantum of punishment, quantum of punishment is essentially one of discretion and does not warrant interference unless the Tribunal is shown to have exercised its discretion arbitrarily or has acted in bad faith. The discretion exercised by the Labour Court in modifying the punishment to compulsory retirement with superannuation benefits does not suffer from such infirmity. Yet another reason which prompts me to think that the reduction of punishment may not warrant interference is the fact that there has been delay of close to 5 years since the occurrence of the incident for the charge memo to be issued.

18. In view of the above both the writ petitions are dismissed and the order of the Tribunal is affirmed. The benefits due in terms of the Labour Court/Tribunal order which is affirmed in this writ petition shall be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar



WEB COPY

1. The General Manager,
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Central Office, 239, Vidhan Bhavan Marg,
Nariman Point, Mumbai 400 021

2. The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, I Floor, B Wing, No. 26,
Haddows Road, Shastri Bhavan, Chennai 600 006.

+1cc to M/s. T. S. Gopalan and co, Advocate SR.No. 32292

+1cc to Mr. Balan Haridass, Advocate SR.No. 32223

W.P. Nos. 29443 of 2011
and 2287 of 2012

RB (CO)
GMY (20/06/2022)