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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2021
PRONOUNCED ON : 28.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.NO.12109 OF 2017

G.Anbukili

...Petitioner

Vs.

- 1.The Chief Manager,
Indian Overseas Bank,
IR Department, P.B.No.3765,
763, Anna Salai,
Chennai-600 002.
- 2.The Senior Manager (Disciplinary Authority)
Indian Overseas Bank,
Inquiry Cell, IR Department,
P.B.No.3765,
763, Anna Salai, Chennai-600 002.
- 3.The Registrar,
Central Industrial Tribunal cum Labour Court,
Shastri Bhavan, Haddows Road,
Chennai-600 006.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, by calling for the records relating to Order dated 28.04.2014 passed by the second respondent and the award dated 29.06.2016 (communicated on 11.01.2017) passed by the third respondent Tribunal and to quash the same and allow the claim petition in I.D.No.84 of 2015 as prayed for.

For Petitioner	:	Mr.Giridhar for M/s.Giridhar & Sai
For Respondent-1	:	Mr.Anand Gopalan for M/s.T.S.Gopalan & Co.
For Respondent-2	:	No Appearance

O R D E R

The petitioner herein, while serving as a Messenger in the respondent Bank, was served with a Charge Memo dated 22.03.2013 stating that she had submitted a bogus school certificate, as if



she had passed VIII Std in April 1975, pursuant to which an enquiry was conducted and she was dismissed from her services on 28.04.2013. Challenging the dismissal order, she had preferred a dispute before the Central Government Industrial Tribunal in I.D.No.84 of 2015 and by an award dated 29.06.2016, her claim petition was dismissed. The said award is put under challenge in the present Writ Petition.

2. Heard the learned counsel for the parties.

3. It is not in dispute that the minimum qualification prescribed for the post of Messenger under the Bank Regulations is a pass in VIII Std. The only charge against the petitioner is that the school certificate produced by her is bogus. The main reason for coming to such a conclusion that the petitioner's school certificate is a bogus one is based on Ex.M.17, which is a letter from the Headmaster of Poolankurichi Elementary School, Karaikudi dated 11.01.2013. In the dismissal order dated 28.04.2014, the disciplinary authority had held that since the charges against the petitioner was proved and that she had knowingly made false statement in connection with her employment in the Bank, the same is regarded as a gross misconduct under the regulations and therefore imposed the major punishment of dismissal from services without notice.

4. The Labour Court had also placed reliance on Ex.M.17 and held that since it is stated by the Headmaster that no one with the name of "Anbukili" had studied in the school with the admission No.336 during the period from 10.06.1968 to 01.06.1995 and also that the petitioner did not put-forth her case that the document was genuine, upheld the dismissal order. Since the entire case revolves around Ex.M.17, which is the letter of the Headmaster, the same is hereby extracted:-

அனுப்ப,னர்
தலைமை ஆசிரியர்,
தி.ஊ.ஏ.து பள்ளி
பூலாங்குறிச்சி
தில்ப,த் துர்
சிவகங்கை.

பெறுநர்
திரு.கிளை மேலாளர் அவர்கள்,
இந்தியன் ஓவர்சீஸ் வங்கி,
மண்டல அலுவலகம்,
காரைக்குடி.



பொருள் : சேர்க்கை எண் 336, 10.06.68ல்
உண்மைத்தன்மைக்கான விளக்கக் கடிதம்
அளித்தல் சார்பு.
பார்வை : தங்களின் 31.07.2012 மற்றும் 06.10.2012
தேதியிட்ட கடிதம்.

தி.உ.ஏ.து பள்ளி பூலாங்குறிச்சி பள்ளி ஆவணங்களின் படி சேர்க்கை எண் 336ல்
அன்புக்கிளி 10.06.68 ல் இருந்து 01.06.75 வரை படித்ததற்கான சான்றுகள் எதுவும் இ
ல்லை என்பதைத் தெரிவித்துக்கொள்கிறேன்.

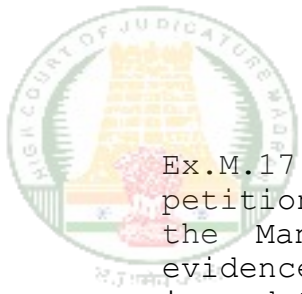
இப்படிக்கு,
கையொப்பம்
தலைமை ஆசிரியர்
01.02.2013

5. The contents of the aforesaid letter of the Headmaster is that, as per the records of the Poolankurichi Elementary School, there are no records in connection with Admission No.336 in the name of Anbukili between 10.06.1968 and 01.06.1975. Ex.M.17, letter was issued by the concerned Headmaster based on a requisition made by the respondent Bank for ascertaining the bona-fides of Admission No.336 of the petitioner. The second respondent, while passing the dismissal order, as well as the Labour Court while considering the claim petition, has misconstrued Ex.M.17 totally. While passing the dismissal order, the disciplinary authority had not dealt with the charges against the petitioner at all. But had only placed reliance on the Ex.M.17 and passed the dismissal order.

6. The Labour Court in para 9 of its award dated 29.06.2016 had stated as follows:-

"In Ex.M.17, the Headmaster has informed that no one with the name of Anbukili with admission No.336 had studied in this school during period from 10.06.1968 to 01.06.1975".

Contrary to such observation, Ex.M.17 reveals that the Headmaster has certified that there was no records available in their school in connection with the petitioner's education between 10.06.1968 and 01.06.1975. When compared to the contents of Ex.M.17, the finding of the Labour Court in this regard is totally misconstrued. "Non availability of the records" pertains to the petitioner's education from 10.06.1968 to 01.06.1975, is totally different from the findings that "the petitioner had not studied in the school during the relevant period". Apart from Ex.M.17, there were no other records for the Management to substantiate their stand that the petitioner had not studied in this school. When there was no clarity in



Ex.M.17 to establish the school certificate produced by the petitioner at the time of appointment, there was a duty cast on the Management to establish their case by letting in oral evidence to prove Ex.M.17. Admittedly, the Headmaster, who had issued Ex.M.17 was not examined as witness. This appears to be a serious error in the findings of the Labour Court and as such, the findings of the Labour Court by misconstruing Ex.M.17, could be termed as 'perverse'.

7. This apart, the Labour Court had also proceeded on certain surmises and premises. The Labour Court in many words had expressed its views that the petitioner had not made any attempts in the enquiry to prove that the documents produced by her was genuine and that, had the petitioner studied upto VIII Std, it would be easier for her. Such surmises and premises are inadmissible, even for preponderance of probabilities. Ex.M.17, being a crucial document, ought to have been substantially proved by the Management. Though the Evidence Act is not applicable to the Industrial Tribunal, that does not mean that when vital issues are disputed, the requirements relating to prove the same can be dispensed with. The Hon'ble Supreme Court in the case of M/s. Bareilly Electricity Supply Company Ltd., Vs. The Workmen and others reported in AIR 1972 SC 330, had upheld this proposition in the following manner:-

"14. An attempt is however made by the learned Advocate for the Appellant to persuade us that as the Evidence Act does not strictly apply the calling for of the several documents particularly after the employees were given inspection and the reference to these by the witness Ghosh in his evidence should be taken as proof thereof. The observations of Venkatram Iyer J, in Union of India v. Varma, (1) to which our attention was invited do not justify the submission that in labour matters where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. The case referred to above was dealing with an enquiry into the misconduct of the Public Servant in which he complained he was not permitted to cross-examine. It however turned out that he was allowed to put questions and that the evidence was recorded in his presence. No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination 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



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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. ..."

8. Likewise, in the case of Moni Shankar Vs. Union of India and Another reported in 2008 (3) SCC 484, the Hon'ble Supreme Court had also considered this aspect as follows:-

"17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See - State of U.P. v. Sheo Shanker Lal Srivastava : (2006) 3 SCC 276 and Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association and another : (2007) 4 SCC 669."

9. The learned counsel for the respondent Bank placed reliance on a decision of the Hon'ble Supreme Court in Rajasthan Rajya Vidyut Prasaran Nigam Ltd., and another Vs. Anil Kanwariya reported in 2021 SCC OnLine 739 to substantiate its submission that when a appointment is procured on the basis of forged document and suppression of material information, the Management would be well within their powers to resort to termination, without holding an enquiry. This proposition will not be of any



assistance to the respondent since this Court has already held in the earlier paragraphs that there was perversity in construing the contents of Ex.M.17, which was the basis for the entire charge, dismissal order and the rejection of the claim petition by the Labour Court. Only when the document produced by the petitioner is substantiated and proved to be a forged document, this decision cited by the learned counsel would be of relevance.

10. Now that, this Court had found that the termination order, as well as the award of the Labour Court, are unsustainable, the consequential relief is that the petitioner would be entitled for reinstatement, together with all attendant benefits.

11. Insofar payment of back wages are concerned, the Hon'ble Supreme Court in the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, the Hon'ble Supreme Court had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:-

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

12. Since this Court had found that the dismissal order is per se illegal and in the light of the decision rendered by the Hon'ble Supreme Court cited above, the workman would be entitled for full back wages.

13. For all the foregoing reasons, the impugned orders passed by the second and third respondent dated 28.04.2014 and 29.06.2016 respectively, are set aside. Consequently, there shall be a direction to the respondents herein to forthwith



reinstate the petitioner back into service, together with continuity of service, full back wages and other attendant benefits, within a period of two weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

DP

To

- 1.The Registrar,
Central Industrial Tribunal cum Labour Court,
Shastri Bhavan, Haddows Road,
Chennai-600 006.
- 2.The Chief Manager,
Indian Overseas Bank,
IR Department, P.B.No.3765,
763, Anna Salai,
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- 3.The Senior Manager (Disciplinary Authority)
Indian Overseas Bank,
Inquiry Cell, IR Department,
P.B.No.3765,
763, Anna Salai, Chennai-600 002.

+1cc to M/s.T.S.Gopalan & Co., Advocate Sr.No.5004

+1cc to M/s.Giridhar & Sai, Advocate Sr.No.5011

W.P.No.12109 of 2017

MT(CO)
RVM(10/02/2022)