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W.P.No.24701 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24701 of 2017

1.The Deputy General Manager (B&O),
Appellate Authority,
State Bank of India
Human Resources Section,
Network-II, Administrative Office,
Madurai Cluster, Maduram Complex,
No.2, Dr. Ambedkar Road,
Madurai – 625 002.

2.Regional Manger (RBO IV)
Disciplinary Authority,
State Bank of India,
Madurai – 625 002.

... Petitioners

Vs.

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

2.A.Ramamoorthi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.9 of 2016 and quash its award dated 30.12.2016.



For Petitioners : Mr.S.Ravindran
Senior Counsel
For Mr.S.Bazeer Ahamed

For R1 : Tribunal

For R2 : Mr.Balan Haridas

ORDER

Facts of the case:

The writ on hand has been filed challenging the Award dated 30.12.2016 passed in I.D.No.9 of 2016.

2. The State Bank of India is the petitioner.

3. The petitioners state that as per the administrative exigencies, periodical transfers of employees are carried out in the petitioner / Bank. The petitioner / Bank is having administrative office at No.2, Dr.Ambedkar Road, Madurai. During December 2013, certain employees in the Madurai region were transferred to various other branches. 3 employees namely K.Rajendran, Senior Assistant was transferred from administrative office to nearby branch situated at Lady Doak College, Madurai, S.Mayilerinathan,



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Senior Head Messenger was transferred within the premises of administrative office and the 2nd respondent in the present writ petition Mr.A.Ramamoorthi, Special Assistant was transferred from Tallakulam branch to Natham branch within Madurai City. All employees were given sufficient joining time to report to the transferred office / branch.

4. Mr.K.Rajendran protested against the order of transfer on 11.01.2014 at about 2:30 p.m. He along with S.Mayilerinathan and the 2nd respondent indulged in unauthorised sit-in-dharna, which lasted till 11:00 a.m. on 12.01.2014. Though the Chief Manager (HR) along with other officials instructed the 2nd respondent and two other employees mentioned above to leave the place and not indulge in disorderly conduct, 2nd respondent and the other two employees continued to hold sit-in-dharna in the administrative office. The 2nd respondent herein during the sit-in-dharna in a disorderly and indecent manner, demanded the production of attendance register relating to administrative office from the officials, who were present there so as to enable Mr.K.Rajendran to sign the attendance register. The 2nd respondent also abetted other staff members to participate in the dharna to engage forcefully against the officials. When, Mr.K.Rajendran sought for



some clarification in the order of transfer and it was furnished to him, the 2nd respondent repeatedly pressurised and demanded modification in the written clarification provided to Mr.K.Rajendran. This resulted in the detention of officials in the office premises situated at the administrative office from 2:30 p.m. on 11.01.2014 to 11:00 a.m. on next day 12.01.2014.

5. This disorderly behaviour of the 2nd respondent forced the officials to lodge a criminal complaint to the police authorities on 12.01.2014. These incidents portrayed the image of the Bank poorly in the eyes of general public and customers. These incidents were published in the Tamil Newspaper “Dinamalar”. The private television channel “Pudhiya Thalaimurai” also aired the above incident. This caused loss of image and reputation to the petitioner Bank. Further, on 12.01.2014, the 2nd respondent arranged to bring outsiders to the administrative office, Madurai and abetted them to force the Bank authorities to permit Mr.K.Rajendran to rejoin duty at administrative office, Madurai.



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6. In respect of the misconducts as stated above, the petitioner / Bank issued a charge sheet dated 21.03.2014 to the 2nd respondent, as the explanation submitted by 2nd respondent was not satisfactory, a domestic enquiry was conducted. The enquiry was held by following the procedures as contemplated. The 2nd respondent was represented by a defence representative in the enquiry. The enquiry was held on 11 sittings commencing from 02.06.2014 to 09.09.2014. 10 witnesses were examined and 17 documents were marked in support of the charges levelled against the 2nd respondent. The 2nd respondent examined Mr.K.Rajendran as his witness and filed two documents.

7. The Enquiry Officer submitted his report dated 27.01.2015, held that the 2nd respondent was guilty of all the charges levelled against him. By letter dated 14.02.2015, a copy of the report of the Enquiry Officer was furnished to the 2nd respondent, requiring him to make his submissions on the findings of the Enquiry Officer. The 2nd respondent's submissions as mentioned in his reply dated 09.03.2015 was not satisfactory. On 28.03.2015, notice of proposed penalty was issued to the 2nd respondent and requiring him to attend the personal hearing. During the personal hearing



held on 27.04.2015, the 2nd respondent's written response was received and oral submissions were heard. As the explanation of the 2nd respondent was not found satisfactory, by order dated 09.05.2015, the 2nd respondent was dismissed from service. The appeal filed by the 2nd respondent was also rejected on 07.08.2015.

8. The 2nd respondent, challenging the order of dismissal by filing I.D.No.9 of 2016 before the Central Government Industrial Tribunal-cum-Labour Court, Chennai. The 2nd respondent did not question the validity of the domestic enquiry held against him. No oral evidence was let in by both parties in the above dispute. The documents of the petitioner Bank were marked as Exhibits M1 to M12 and the 2nd respondent's documents were marked as W1 to W4. The 1st respondent passed an award dated 30.12.2016, setting aside the punishment of dismissal from service issued to the 2nd respondent and directed his reinstatement with pay at next lowest stage in the scale of pay from 09.05.2015 onwards. Thus, the petitioner is constrained to file the present writ petition.



Arguments on behalf of the petitioners:

9. The learned Senior Counsel appearing on behalf of the petitioner / Bank made submissions that the award of the Labour Court is perverse to the extent of interfering with the punishment of removal from service, which was imposed on the 2nd respondent after adhering to the principles of natural justice and affording opportunity to the 2nd respondent / employee. The 2nd respondent / employee has not challenged the validity of the domestic enquiry held against him. The charges against the 2nd respondent were held proved. The nature of the charges are grave affecting the institutional integrity of the State Bank of India and thus, the Disciplinary Authority inflicted the punishment of removal from service. The 1st respondent / Labour Court failed to appreciate the findings of the enquiry officer in his report, which were not disputed by the 2nd respondent. The Labour Court proceeded on the mistaken impression as if there are no findings in the enquiry report. The 1st respondent has further not considered the elaborate discussions made by the Enquiry Officer in his report regarding allegations against the 2nd respondent, which were proved beyond doubt.



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10. The learned Senior Counsel appearing on behalf of the petitioners strenuously contended that there cannot be any compromise on discipline in the petitioner / Bank. The petitioner / Bank suffered loss of reputation on account of the serious misconduct committed by the 2nd respondent along with other two employees on 11.01.2014 and 12.01.2014. When the misconduct committed by the employees of the Bank, affected the reputation of the Bank and caused inconvenience to the customers and other officials of the administrative branch of the Bank. The 1st respondent has erroneously invoked Section 11(A) of the Industrial Disputes Act and modified the punishment, which is untenable.

11. The learned Senior Counsel for the petitioners drew the attention of this Court with reference to the findings of the Labour Court as detailed under:

Findings of the Lower Court:

(a) It is an admitted fact that at least from 2:30 P.M., the petitioner was with Rajendran and with his colleague.

(b) The petitioner himself did not give evidence to advance his case.



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(c) It is there in evidence that in spite of the request and persuasion of the officers they remained inside the office causing difficulty to the officers and forcing them to stay inside the office. It was only because of the three remained in the office several of his officers had to remain in the office in their attempt to solve the problem even during odd hours and when attempt failed, they were forced to call the Police and later make a formal complaint at the instance of the Police.

(d) The evidence and the statement given by most of the witnesses would reveal that the petitioner and other two continued to remain inside the office in spite of the direction to leave the office. In PEX-1, Satish Krishnan a special officer had stated that he has tried to convince the petitioner and others to leave the administrative office building but they were not obliging. According to him, when the police came they also requested them to vacate the building but they refused. Still another attempt was made by the police officials after formal complaint was lodged by the management. Yet, it was only refusal on the part of 3 including the petitioner.

(e) Saturday was a half working day and officers were expected to leave by 2:30 p.m. Most of them had to remain inside the office since the petitioner and other two refused to leave the premises.



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So, the charge of the petitioner and others refused to leave the office premises in spite of the request and disobeyed the lawful and reasonable orders of the management is clearly established.

(f) From the evidence, it could be seen that it is not a case of victimization. It is the admitted case that the petitioner as well as two others were inside the office beyond office hours on 11.01.2014 and remained at the office until 11 A.M on the next day forcing the officers to remain inside the office. The charge based on this certainly could not be termed as victimization.

(g) Dated at Chennai on 14th day of October 2022.

12. The petitioners have stated that the charges were framed for the unruly behaviour of the 2nd respondent indulged in dharna, abetting other staff members to participate in dharna, bringing the outsiders from 02:30 p.m on 11.01.2014 to 11:00 a.m. on 12.01.2014.

13. The act of misconduct of the 2nd respondent amount to gross misconduct in terms of settlement dated 10.04.2002, namely paragraph 2 of the written notes filed on behalf of the petitioners reads as under:

5.(c) - Riotous or disorderly or indecent behavior on



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the premises of the bank.

- i. 5(d) - Wilful damage or attempt to cause damage to the property of the bank or any of its customers.*
- ii. 5(e) - Wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior.*
- iii. 5(j) - Doing any act prejudicial to the interest of the bank.*
- iv. 5(1) - Abetment or instigation of any of the acts or omissions above mentioned.*

14. 10 witnesses were examined and 17 documents were marked to prove the charges levelled against the 2nd respondent. The copy of the Police complaint and newspaper publications were also marked as exhibits, including the CCTV footages. It is contended that the 1st respondent Labour Court failed to note the cardinal principle that in the domestic enquiry, the proof required is one of “preponderance of probability” re-examined the evidence, as if it was considering the criminal case. The 1st respondent has not given any reason in its award, as to why the Labour Court was not accepting the findings of the Enquiry Officer, which is fatal to the impugned award.



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15. The learned Senior Counsel appearing on behalf of the writ petitioners relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Hombe Gowda Educational Trust and Another Vs. State of Karnataka and Others*** reported in ***[(2006) 1 SCC 430]*** and the relevant paragraph 30 reads as under:

“30. This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/ industrial undertaking received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of [Article 141](#) of the Constitution of India, as noticed in the decisions noticed supra, categorically



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demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this court was bound to follow the decisions of this Court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same.”

16. The learned Senior Counsel appearing on behalf of the petitioners also relied on the judgment of this Court (Delivered by SMSJ), in the case of ***Hindustan Unilever Limited Vs. The Presiding Officer, Labour Court and Others*** reported in ***[(2019) 4 LLJ 590]***, wherein this Court has considered the Fundamental duties as enunciated under Article 51-A of the Constitution of India, which is to be considered, while dealing with the rights of the employees. The relevant paragraphs are extracted hereunder:



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“32. It is relevant to remind the fundamental duties of a citizen enunciated under Article 51&126;A of the Constitution of India. Sub Clause (i) to Article 51&126;A enumerates that ? to safeguard public property and to abjure violence?. Sub Clause (j) stipulates that ?to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement?.

33. Emphasizing the fundamental duties of the citizen under Article 51&126;A of the Constitution of India, this Court is of the strong opinion that rights and duties are inseparable concepts and the person, who is claiming right, must keep in mind that he has got corresponding duties towards the fellow citizen and to our great Nation at large. Rights and duties are the relative terms and therefore, in the current day situation, while dealing with the rights of the individuals, his duties are also to be considered by the Constitutional Courts in order to adopt a pragmatic and balancing approach. It is not as if while upholding a rights of a citizen, Court can neglect his duties. Only if a citizen respects his



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duties as law requires, then alone he can claim his right under the law and it is not as if he can violate his duties and responsibilities and claim rights in isolation. Such a concept, if at all in the mind of a person, the same can never be encouraged by the Constitutional Courts.

34. Keeping this view, this Court is of an opinion that certain allegations, manhandling or physically attacking or assaulting the co&126;employees or the higher officials can never be tolerated and such offences are already classified as punishable offence under the Indian Penal Code. This apart, respecting the fellow citizen or colleagues in the work place is of paramount importance. Only through maintaining the discipline and decorum, the industrial activities can be developed, so also, the developmental activities across the country can be taken forward. Thus, discipline and decorum in industrial places are of paramount importance. It is an organizational discipline, which would make the industry to grow further and to develop the prospectus of our great Nation as well as the people at large. Thus, compromising the discipline will lead to



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destruction within the industry / public institutions. Any indisciplined industry or organization can never see the light of growth. Most of the industries / public institutions had collapsed on account of indiscipline, mal administration or corruption. Thus, discipline, decorum, honesty and integrity are the vital characters to be maintained in the industry / public institutions, factories and trade activities, so as to take our Nation forward on par with the global standards. Our great Nation is a fast growing Country in the world. Under these circumstances, Courts are also duty bound to ensure that such discipline, decorum, honesty and integrity are being maintained at all institutional levels and all such institutional respects are also protected.

35. This being the concept to be borne in mind, this Court is of an opinion that any indiscipline, if noticed and disciplinary actions are initiated against the employees, Courts must be keen in analyzing the factors and arrive a conclusion that such indiscipline activities are brought down and dealt in accordance with law without showing any leniency or misplaced



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industrial establishment is of paramount importance and the nature of the proved misconduct its gravity and seriousness are to be looked into before modifying the punishment. In a case, where a workman assaulted, the superior official by using filthy language and his previous misconducts in the factory were also established by the employer, then this Court is of the considered opinion that there is no reason whatsoever to interfere with the penalty of termination imposed by the employer. Every such punishment imposed is meant to send a clear message to the society at large, more specifically to the employees working in industrial establishments / public institutions. The major penalty in this regard is to ensure that the industrial establishments are protected from such unruly activities of few workman and to protect the interest and the welfare of the organisation itself. Therefore, the Labour Court cannot simply interfere with the quantum of punishment without assigning proper and acceptable reasons. Merely invoking Section 11&126;A of the Industrial Disputes Act is certainly impermissible and in all such cases, where Labour Court has taken a



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decision to modify the punishment or to quash the punishment imposed by the employer, then adequate reasons are to be recorded in the award and a mere observation that the punishment of termination is ?grossly disproportionate? is unacceptable for arriving such a conclusion that the punishment is grossly disproportionate. The Labour Court is bound to assign proper and acceptable reasons. Thus, the findings of the Labour Court that the punishment is grossly disproportionate is not based on any valid material and in the absence of any convincing reason, the said findings are construed to be perverse and unsustainable.”

17. Relying on the above judgments, the learned Senior Counsel appearing on behalf of the petitioners is of an opinion that the proved charges against the 2nd respondent in the case are grave in nature and caused loss of reputation to the State Bank of India and further, resulted in inconvenience to the officials of the Bank. Thus, the major penalty of removal from service imposed by the Disciplinary Authority is just and proper and the interference made by the 1st respondent / Labour Court



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without assigning any convincing reason is untenable and liable to be set aside.

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Arguments on behalf of the Second Respondent:

18. The learned counsel appearing on behalf of the 2nd respondent / employee disputed the contentions raised by the petitioners by stating that the Labour Court award is justifiable on many grounds. The 1st respondent / Labour Court rightly invoked Section 11(A) of the Industrial Disputes Act and modified the punishment as that of reduction of scale of pay to next lower stage. It is not as if, the 2nd respondent was left without any punishment. The modified punishment of reduction of pay to next lower stage itself would sufficient enough to meet out the interest of justice and with reference to the gravity of the proved charges against the 2nd respondent.

19. The learned counsel for the 2nd respondent reiterated that the 2nd respondent is working in the State Bank of India from the year 1988 onwards. He has got unblemished record of service for more than 25 years. After filing of the present writ petition, the 2nd respondent was reinstated in service and working without any adverse remarks for the past about 5 years. The 2nd respondent has served about 30 years in the State Bank of India without suffering any punishment or adverse remarks. While so, the Labour



Court has considered the mitigating factors and the gravity of the proved charges and accordingly, modified the punishment of dismissal from service to that of reduction of pay to next lower stage. Therefore, the writ petition is liable to be rejected.

20. The learned counsel for the 2nd respondent drew the attention of this Court with reference to the findings of the Labour Court and it is relevant to extract paragraphs 31 and 32 of the impugned award, which reads as under:

“31. Was there a sit-in Dharna as alleged in the Charge Sheet? What is the evidence available in this respect? In his statement marked as PEX-1 Sajith Krishnan does not mention about the sit-in Dharna. What he has stated is that even after the office hours the three employees including the petitioner were not willing to move out from the lobby. He has also stated that the efforts to convince the three people started in the evening and continued till the next day. During his examination what he has stated is that the three were sitting in DGM's lobby even after office hours and the officials were trying to



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convince them to leave the office. Witness Shanmugham has stated in his statement marked as PEX-2 that the petitioner was part of sit-in Dharna. However, what is seen from the statement of this witness itself is that the petitioner and the other two were moving from place to place inside the office either on their own or at the instance of the superior Officers. Rajendran was frequently going outside and talking over his mobile phone. While Rajendran was speaking with this witness the petitioner and Mylerinathan were standing at the western side of the wall in the cabin. Rajendran himself was sitting before him. As per PEX-3, the statement given by Karthikeya Venkatesan there is no reference to a Dharna by the petitioner and others. What he has stated is that while himself and others were preparing to leave the office Rajendran the petitioner and the other were sitting in the DGM Secretariat. However, during his examination when a leading question was put to him he has stated that Dharna was held by Rajendran along with the petitioner and another. As seen from PEX-4 the statement given by Kumaravelu, Rajendran had approached him by



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1030 AM or 1100 AM. Rajendran tried to give a letter to Kumaravelu but he was informed that the matter does not come under his duties. He has left the cabin and he had come back by 0230 PM accompanied by two persons. The three had been sitting in his office for half an hour. When he went out for lunch they also left. Later he had seen them sitting outside DGM's room. As could be seen in PEX-5 the statement given by Chidambara Jeevanandham, Rajendra was sitting in his own seat upto the lunch time. He does not state what happened subsequently. As seen from PEX-6 given by Mahalingam, the Deputy Manager Rajendran accompanied by the petitioner and Mylerinathan had approached by 0200 PM requesting to meet the DGM. Since DGM was not available the three went away and came back by 0330 PM to his room. When DGM came back by 0430 PM he asked the three to leave the office. He has further stated in his statement though the petitioner and another had been accompanying Rajendran the two did not speak anything. But they were waiting in his room till 0930 PM. The HR Section Officers had arranged dinner for all including the petitioner



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and Mylerinathan. When the Deputy Manager told the three that he wanted to lock his room they left the room. Witnesses Senthil Kumar and Samiuddeen Hussain also do not refer to Dharna in their respective statements.

32. What could be seen from the statements and evidence is that on the basis of demand of Rajendran to permit him to sign the Attendance Register or to deliver a letter to him based on the High Court order hectic negotiations were being held between Rajendran and the Officers and they were trying to solve the problem. A Dharna in its strict sense does not seem to have occurred in the office on the day. On the other hand, there seems to have been persuasion on the part of the Rajendran to convince the Officers about his right to join duty and the attempt of the Officers to convince him otherwise.”

21. The learned counsel for the 2nd respondent contended that the Dharna was not established as per the statement of the Security Officer Mr.Sajith Krishnan, the protest alone was established. Thus, the punishment of removal was considered as excessive by the Labour Court and accordingly, the modified punishment of reduction of pay to next lower stage



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was imposed. Thus, there is no infirmity in respect of the award passed and the writ petition is liable to be rejected.

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**Analysis:**

22. Considering the facts established, it is not in dispute that the charge memorandum was issued in accordance with the procedures as contemplated. The domestic enquiry was conducted in compliance with the principles of natural justice. The 2nd respondent was afforded with an opportunity to defend his case and he was permitted to engage defence assistant. Thus, there is no infirmity in respect of the departmental enquiry conducted. The enquiry proceedings were not under challenge before the 1st respondent / Labour Court. Thus, the Disciplinary Authority has conducted the departmental disciplinary proceedings in the manner contemplated and by following the procedures stipulated.

23. Regarding the allegations, 6 charges were framed, culminated from the incident occurred on 11.01.2014 and 12.01.2014. The Charge No.1 indicates that at about 2:30 p.m. on 11.01.2014 (Saturday) to around 11:00 a.m. on 12.01.2014 (Sunday), the 2nd respondent along with two other employees, participated in an unauthorised sit-in-dharna, which amount to gross misconduct in terms of paragraph 5(j) of the Memorandum of Settlement dated 10.04.2002.



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24. Point to be noted with reference to the above charges is that the 2nd respondent along with other two employees allegedly conducted sit-in-dharna within the premises of the administrative office at Madurai at about 2:30 p.m. on 11.01.2014, which was a Saturday. The business hours of the Bank on Saturday closes at 2:30 p.m. Thus, it is made clear that the 2nd respondent along with two employees conducted agitation beyond the business hours and on the next day, which was Sunday, holiday. Thus, the contention of the petitioners that the protest of the employees caused inconvenience to the customers of the Bank is not acceptable.

25. Next question would be, whether the proved misconduct, warrant the major penalty of removal from service. No doubt, the allegations are regarding the protest made by the employees on account of administrative transfer. Transfer is an incidental to service, more so, a condition of service. Thus, an employee is expected to serve wherever he is posted in the interest of administration. The State Bank of India is the largest service provider and therefore, the public duties towards its customers are of paramount importance. High discipline in the Banking Sector is vital as they are dealing with financial transactions and the customers are depositing their hard



earned money with trust. Thus, any breach of trust at the instance of the employees are to be viewed seriously. However, in the present case, basic factor remains that the 3 employees conducted protest against their administrative transfers after business hours at 02:30 p.m. on 11.04.2014 (Saturday) and on 12.01.2014 (Sunday). Thus, the protest was made against the administration of the State Bank of India and not affecting the business transactions with the customers of the Bank.

26. The other charges are also relating to the same incident, more specifically, regarding the consequential misconducts against the 2nd respondent. No doubt, the administrative transfers are not issued to the far off place as rightly contended by the learned Senior Counsel appearing on behalf of the petitioners. The administrative transfers were effected within the city, which would not affect the normal family life of the 2nd respondent. Therefore, there is no reason to protest against such administrative transfers issued within the city and if at all any grievances exist to the transferee, he has to approach the Competent Authority or Appellate Authority for redressing his grievances. Contrarily, no employee of the Bank can sit inside the administrative office premises and raise protest against the



administrative transfers, which amounts to misconduct. In the present case, the misconduct of protest has been established beyond any pale of doubt.

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27. Question arises, whether it is a sit-in-dharna or a protest done on account of an administrative transfer. No doubt, employees are not expected to act in provocation. They are expected to behave in the manner known to law and conducive to the atmosphere of the public premises. Thus, sit-in-dharna inside the office in an illegal manner or conducting a protest without obtaining appropriate permission is amounting to misconduct. However, the gravity of proved misconduct is to be weighed with reference to the punishment imposed.

28. In the present case, the 2nd respondent along with two other employees have not declared any sit-in-dharna. Simply they sat in the office premises after working hours on 11.01.2014 and refused to leave the office premises, which caused inconvenience to the other officials, who all are responsible for the safety and security of the State Bank of India office premises. There was no incident of violence. The 2nd respondent was sitting in the office premises and sought for certain clarifications and informations



from the officials. Even after providing such informations, he continued to sit in the office premises till 11:00 a.m. on 12.01.2014, which was a Sunday.

Thus, the entire incident as established during the enquiry proceedings reveals that after office hours, the 2nd respondent sat within the office premises and sought for certain clarifications from the Bank officials and refused to leave the office premises, despite the request made by the Higher Officials, and the Police.

29. How to classify such an act of an employee, who is working in the same office premises. It is not in dispute that the 2nd respondent was working in the very same administrative office at Madurai. He was transferred from administrative office to the Lady Doak College in the Madurai. The administrative transfer in the opinion of this Court would have caused grievance in the mind of 2nd respondent and more so, he would have developed a doubt regarding the genuinity of the administrative transfer issued by the competent authority and asked clarifications. No doubt, even in such circumstances, an employee is expected to approach in the manner contemplated under law by filing an Appeal before the Higher Authority or by approaching the Court of Law. Contrarily, an employee is not expected to



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sit in the office beyond the office hours in order to cause inconvenience to the other officials, who all are responsible for the safety and security of the public offices. Therefore, the conduct of the 2nd respondent at no circumstances be appreciated or approved by this Court. However, the fact remains the 2nd respondent had not committed any act of violence nor misbehaved with the higher officials of the Bank. No doubt, he asked for certain clarifications and details from the officials, which would have caused certain irritation and inconvenience to such officials. However, the said misconduct cannot be construed as grave to the extent of warranting major penalty of removal from service.

30. In the context of the facts and circumstances of the case on hand, the judgment relied on by the learned Senior Counsel appearing on behalf of the petitioners are of no avail to the petitioner / Bank as in the case of ***Hindustan Unilever Limited*** (cited *supra*) an act of violence was proved and therefore, this Court held that misplaced sympathy or leniency would result in adverse consequences regarding the developmental activities in the industries and in our Great Nation. No doubt, duties and responsibilities are corresponding and to be considered, while deciding such nature of cases in



disciplinary matters. However, the Courts are bound to consider the nature of the proved charges and the quantum of punishment imposed and if it is disproportionate, then judicial review is justifiable.

31. No doubt, our Great Nation is the strong supporter of reformative theory. Thus, the punishment imposed must be in commensuration with the gravity of charges. The previous conduct of the employee throughout his services are also to be taken into consideration, while imposing major penalty of removal from service. Therefore, a balancing approach in-between reformation and deterency is to be adopted.

32. The Constitutional Courts have ruled that punishment in disciplinary matters, the proportionality of the punishment is to be considered by the Courts. No doubt, the Disciplinary Authority is competent to impose any penalty contemplated under the Rules. However, the penalty imposed, whether disproportionate or excessive, is to be ascertained and the High Court in exercise of power of judicial review shall interfere with the quantum of punishment, if it is excessive. Equally, the Labour Court is empowered to modify the punishment of dismissal from service under



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Section 11(A) of the Industrial Disputes Act. However, while interfering with the quantum of punishment, the Labour Court has to assign adequate reasons for such interference.

33. In the present case, the Labour Court has formed an opinion in paragraphs 31 and 32 of the award, which would be sufficient enough to modify the punishment by invoking Section 11(A) of the Industrial Disputes Act, 1947.

34. Therefore, the Labour Court considered the fact that the 2nd respondent along with two employees were inside the office beyond office hours and the officials held a negotiation with the employees and requested them to leave the office premises. There was no violence, offensive statements, misbehaviour or otherwise were found during the protest by the 2nd respondent along with two other employees. Thus, the 2nd respondent along with two other employees were sitting in the office premises and protested against the administrative transfers issued against them.



35. In the context of protest, the Right to Protest is a Constitutional Right of a Workman. However, Right to Protest is subject to restriction and the procedures which is to be followed. In the present case, the reason for the protest seems to be untenable. However, the 2nd respondent / employee without any permission or approval from the competent authorities, sat inside the office premises beyond office hours, which amounts to an illegal protest, which is a misconduct. Thus, there is no justification for the manner of protest made by the 2nd respondent by sitting inside the office premises beyond office hours in order to cause inconvenience to the Higher Officials of the petitioner / Bank. However, this Court is of the considered opinion that the punishment of removal from service is harsh, excessive and disproportionate. Thus, this Court do not find any infirmity in respect of the modification of punishment by the Industrial Tribunal by invoking the powers conferred under Section 11(A) of the Industrial Disputes Act, 1947.

36. The long and clean services of about 25 years rendered by the 2nd respondent / employee to be considered. That apart, 5 years of clean service rendered by the 2nd respondent, during the pendency of the writ petition is to be taken note of. The proportionality of the punishment is also to be taken



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into consideration. The 2nd respondent has not committed any act of violence or vandalism or grave offence or an act of misbehaviour with the officials or otherwise. Therefore, the proved charges against the 2nd respondent cannot be construed as grave to an extent, warranting the major penalty of removal from service. Thus, the modification of punishment imposed by the Labour Court to that of reduction of pay to next lower stage is justified and there is no perversity.

37. Accordingly, this Court has no hesitation in forming an opinion that the writ petitioners have not established any acceptable ground for the purpose of interfering with the Award dated 30.12.2016 passed in I.D.No.9 of 2016 and consequently, the award of the Labour Court stands confirmed, with the following directions:

(a) The 2nd respondent / employee is not entitled for any back wages as the principles of 'no work no pay' would be applicable.

(b) The 2nd respondent / employee is entitled for continuity of service.



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(c) The petitioner / Management is at liberty to transfer the 2nd respondent / employee to the transferred branch at Lady Doak College, Madurai or to any other branch in Madurai District for the remaining period of services, enabling him to realise the importance of the public services in the interest of public at large.

38. With the above directions, the Writ Petition stands disposed of.

No costs.

19.10.2022

Jeni

Index : Yes

Speaking order

To

The Presiding Officer
Central Government Industrial Tribunal-
Cum-Labour Court,
Chennai.



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S.M.SUBRAMANIAM, J.

Jeni

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19.10.2022