IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	25.08.2021
Pronounced on	:	06.04.2022

CORAM :

The Hon'ble Mr.JUSTICE T.RAJA

AND

The Hon'ble Mrs.JUSTICE T.V.THAMILSELVI

Writ Appeal Nos.4346 & 4350 of 2019

D.Suganthi,
W/o.S.Duraisami ... Appellant in both W.As.

-Vs-

1. The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Chennai-600 006.

2. State Bank of India,
rep. by its Deputy General Manager (B&O),
Appellate Authority,
Administrative Unit,
Kunrinji Complex, State Bank Road,
Coimbatore-641 018.

3. Regional Manager (Region II),
Disciplinary Authority,
State Bank of India,
Administrative Unit,
Kurinji Complex, State Bank Road,
Coimbatore – 641 018. ... Respondents in both W.A.s

Prayer in W.A.No.4346 of 2019 : Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 14.10.2019 in W.P.No.4152 of 2016 and consequently direct the 2nd respondent Bank to reinstate the appellant with full back wages and all other attendant benefits, award costs.

Prayer in WP No.4152 of 2016: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the concerned records from the 1st respondent, quash the Award of the 1st respondent Tribunal dated 30.7.2015 in I.D. No.79 of 2014 in so far as holding that Charge No.3 and 5 are proved and giving liberty to the respondent bank to impose the minor penalty in respect of Charge No.3 and 5.

Prayer in W.A.No.4350 of 2019 : Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 14.10.2019 in W.P.No.37774 of 2015, thereby direct the 2nd respondent Bank to reinstate the appellant with full back wages and all other attendant benefits, award costs.

Prayer in WP.37774 of 2019 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st Respondent in I.D.No.79 of 2014 and quash its Award dated 30.07.2015.

For Appellant : Mr.Balan Haridas

For Respondents : Mr.S.Ravindran,
Senior Advocate for
Mr.S.Bazeer Ahamed
for R2 and R3

COMMON JUDGMENT

T.V.Thamilselvi, J.

These Writ Appeals have been filed by the appellant herein challenging the common order passed by the learned learned Single Judge in W.P.Nos.37774/15 and 4152/16, dated 14.10.2019, in and by which, the award passed by the Tribunal in I.D.No.79 of 2014, dated 30.07.2015, was quashed.

2. Brief facts leading to the filing of the appeal are as follows :-

The appellant herein is an employee of 2nd respondent bank. The 2nd respondent framed charges against the appellant on the ground that the transaction in her savings bank account was disproportionate to her income. The 2nd respondent bank, after conducting detailed enquiry, imposed the punishment of discharge from service with superannuation benefits and without disqualification from future employment. The appellant herein raised an Industrial Dispute questioning the punishment. While adjudicating the dispute, the 1st respondent Tribunal set aside the punishment of discharge and directed the 2nd respondent Bank to reinstate the appellant with full backwages, continuity of service and all other benefits. In respect of two proved charges, viz., Charge Nos. 3 and 5, the 1st respondent Tribunal granted liberty to the 2nd respondent bank to impose the punishment commensurate to the said charges on the delinquent. The said award passed by the 1st respondent Tribunal is challenged in both Writ Petitions. Learned Single Judge, by the impugned common order dated 14.10.2019, holding that the punishment is appropriate and very much in commensurate with the proved charges, quashed the award passed by the Tribunal.

3. Assailing the impugned common order passed by the learned Single Judge, Mr.Balan Haridas, learned counsel for the appellant, submitted that when the respondent bank issued a charge memo dated 06.06.2012 containing 7 charges, the appellant gave her explanation dated 22.06.2012 refuting the charges levelled against her. The respondent bank ordered domestic enquiry and one Mr.Ruban Joseh was appointed as Enquiry Officer and he commenced the enquiry on 28.08.2012 and after examining oral and document evidence produced by either side, he submitted his report on 04.12.2012 holding that Charge Nos.1,4,6 and 7 were proved, Charge Nos.3 and 5 were partly proved and Charge No.2 was not proved. Thereafter, the appellant gave her explanation to the Enquiry Report on 15.12.2012 and on receiving the same, third respondent/Disciplinary Authority issued a second show cause notice dated 06.02.2013 proposing the punishment of discharge from service with superannuation benefits and without disqualification from future employment and the appellant was further directed to appear for the personal hearing. Accordingly, she appeared before the authority and demonstrated how the proposed punishment is illegal. However, without properly appreciating the material on record, the third respondent vide order dated 16.03.2013 imposed the punishment of discharge from service with superannuation benefits and without disqualification for future employment.

4. Continuing further, Mr.Balan Haridass, learned counsel for the appellant, argued that when the Presenting Officer had simply filed xerox copies of 86 documents, they were mechanically marked as Exs.P1 to P86, but, the contents and relevance of those documents were not proved through any witness. Therefore, the action of the Enquiry Officer taking 86 documents on record and thereby relying the same holding the appellant guilty was grossly illegal and such a procedure adopted by the Enquiry Officer is in utter violation of the principles of natural justice.

5. It is further contended that on the side of Bank to prove the allegations, they have neither produced any document nor any witness was examined, however, on the other hand, on the side of the delinquent, one Mr.Mohammed Mustafal was examined to

disprove the said allegations. Whileso, in the absence of any material on record, the Enquiry Officer rendered a perverse finding as if Charge Nos.1,4,6 and 7 as proved and Charge Nos.3 and 5 as partly proved, hence, it is a case of no evidence and therefore, the punishment imposed against the delinquent without semblance of any evidence is liable to be set aside.

6. It is further argued that when Industrial Dispute was raised, learned Tribunal came to the conclusion that Charge Nos.1, 4, 6 and 7 as not proved and therefore, those allegations levelled against the appellant would not amount to misconduct under Clause 5(j) of the Memorandum of Settlement, and in respect of Charge Nos.3 and 5, the Tribunal held that they were proved but this will be proportionate to the minor punishment as per Clause 5(c) of the Memorandum of Settlement and by holding so, the Tribunal has set aside the punishment of discharge from service and thereby directed the respondent bank to reinstate her with back wages, continuity of service and all other attendant benefits, giving liberty to the respondent bank to impose minor penalty in respect of Charge Nos.3 and 5. Therefore, the writ petition was filed concerning only Charge Nos.3 and 5 directing to impose minor penalty.

7. It is further argued that when the appellant has given all the details pertaining to all the transactions in respect of Charge Nos.1, 4, 6 and 7 and examined one Mr.Mohammed Mustafal to prove that they were all private transactions of the appellant, learned Tribunal has accepted the same on proper appreciation of evidence. However, learned Single Judge has erroneously come to the different conclusion as if the appellant has misused her savings bank account for certain commercial transactions. It is further submitted that Charge Nos.3 and 5 were partly proved by the Enquiry Officer as they are relating to wrong credits which were reversed immediately and the appellant was not having any pecuniary gain, because, it was by pure negligence arising out of work pressure and oversight error, not with an intention to misuse public money or bank money. However, learned Single Judge, misreading the said explanation, proceeded as if the said explanation was in respect of all the charges and thereby wrongly interfered with the findings and conclusions reached by the learned Tribunal. It is further argued that during the enquiry, xerox copy of 86 documents were marked and although relevancy of those documents were not proved by any evidence, learned Single erred in holding as if those documents were not disputed by the appellant. It is not known how the xerox of those documents can be relied upon without the original documents, that too, without any reliable oral and documentary evidence, he pleaded.

8. Per contra, Mr.S.Ravindran, learned Senior counsel for the respondent bank, submitted that the appellant has misused her savings bank account for unrelated commercial transactions, which are contrary to clause 5(j) of Memorandum of Settlement and it would seriously prejudice the interest of the 2nd respondent Bank. Further, he would also submit that gross negligence on the part of the appellant employee was established before the 1st respondent Tribunal with all available materials and records, but the 1st respondent Tribunal without appreciating the evidence properly, gave perverse findings, which were rightly set aside by the learned Single Judge, hence, no interference is called for.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. It is seen from the records that after the issuance of charge memo dated 06.06.2012, the appellant gave her explanations on 22.06.2012 refuting all the charges levelled against her. Thereafter, the respondent bank ordered for domestic enquiry and one Mr.M.J.Ruban Joseph was appointed as Enquiry Officer. The enquiry was commenced on 28.08.2012 and during the first hearing on 28.08.2012, the Presenting Officer produced some documents and when the second hearing was held on 25.09.2012, the Presenting Officer did not produce any witness, however, when the hearing was held on 09.10.2021, one Mr.Mohammed Mustafa was examined on the side of the appellant. Finally, the Enquiry Officer submitted his report on 04.12.2012 holding that Charge Nos.1,4,6 and 7 were proved, charge Nos.3 and 5 were partly proved and Charge No.2 was not proved.

11. In this context, let us see what are all the charges framed against the delinquent:-

> "At G.H.Road branch
>
> Charge 1
>
> You had remitted cash as well as effected transfer transactions from your accounts to third party accounts aggregating Rs.3,87,040/- as detailed in Annexure 'A'.
>
> At B.P.Agraharam Branch
>
> Charge 2
>
> On 05.06.2007 you prepared a composite voucher for debit to your account No.11023451526 and for credit of your SB A/c. 11023519734 for Rs.2600/- whereas you actually debited A/c. No.11023452621 of Sri Saraswathy Vidyalaya Matriculation School and credited your SB Account. However, the amount was recovered from you after coming to our notice on 20.12.2011.
>
> Charge 3

On seven occasions between 08/02/2008 and 09/12/2009 the remittances received by you over the counter for credit of TASMAC account were credited to your account and subsequently reversed the amount and credited to TASMAC account on the same day in five occasions. In other two occasions, remittances initially credited to your account were reversed and credited to TASMAC account only on the next day as detailed in Annexure 'B'.

Charge 4

You had remitted cash as well as effected transfer transactions from your accounts to third party accounts aggregating Rs.149,670/- as detailed in Annexure 'C'.

At Erode Branch

Charge 5

On 06.07.2010 you had transferred an amount of Rs.10000/- from your SB Account No.11023519734 to one Subramani, TASMAC employee, A/c. No.11023497254 maintained at B.P.Agraharam Branch without any voucher. On 21.08.2010 you set a hold for Rs.10000/- to his above non-home branch account without any authority with a narration 'wrong credit' on 06.07.2010. Subsequently, on 01.10.10 by debit to his above account transferred an amount of Rs.10000/- to your SB Account No.11023519734 by removing the said hold.

At Arachalur Branch

Charge 6

You had remitted cash as well as effected transfer transactions from your own accounts to third party accounts aggregating Rs.149,475/- as detailed in Annexure 'D'.

Charge 7

The credit summation in your accounts for the years 2008, 2009 and 2010 were 15,64,403, 11,52,860/- and 11,91,269/- respectively which were disproportionate to your known source of income.”

In respect of Charge Nos.1, 4 and 6, the justification given by the learned Senior Counsel for the Bank that the transactions mentioned in those charges were all on record and moreover, they were marked without any objection from the appellant and therefore, once the transactions were admitted the burden shifts on the appellant to prove the same. However, we are unable to agree with the said submissions. It is seen from the records that all those 86 documents filed by the Bank were all xerox copies and they were marked without any oral evidence. Therefore, learned Tribunal has rightly come to the conclusion that the punishment of discharge from service was without any justification. It is further held by the Tribunal that there is no loss caused to the Bank on account of the transaction alleged against the appellant. When the Bank has failed to establish that these transactions were turned out to be prejudicial to the interest of the Bank and that it has affected the Bank adversely, such transaction cannot be termed as prejudicial or against the interest of the Bank under Clause 5(J) of the Memorandum of Settlement. Thus, in our considered view, learned Single has wrongly held against the appellant, especially when the Bank did not let in any oral evidence to prove the documents filed in the enquiry.

12. Coming to the third charge, on several occasions between 08.02.2008 and 09.12.2009, remittance received by the appellant over the counter for credit of TASMAC account were credited to her account, but, subsequently it was reversed and re-credited to TASMAC account on five occasions on the same day and in two occasions on the next day. In her explanations, she stated that she had erroneously posted the same into her account, however, on identifying the mistake committed by her, she had immediately reversed the same and the details of error committed have been recorded in her error book. The annexure shows that on 12.08.2009, 29.08.2008, 08.05.2009 and 09.12.2009, she had made remittance due to TASMAC account to her own account, but, she had reversed the same and remitted to the correct TASMAC on the same day, hence, the same cannot be construed as serious charges. When the appellant gave her explanation that due to oversight error and work pressure, she had inadvertently credited certain remittance to her own account, but, subsequently on the same day she had credited the same to the TASMAC account, in our considered view, such lapse committed by her was due to negligence. As per Clause 7(c) of the Memorandum of Settlement, neglect of work or negligence in performing duties is described as a minor misconduct and thereofre, this cannot be described as a gross misconduct as defined under Clause 5(J) of the Memorandum of Settlement. Therefore, as rightly held by the Tribunal, the charge No.3 cannot be found to be a serious charge. Therefore, impugned order passed by the learned Single Judge reversing the said finding does not sound good.

13. Coming to the Charge No.7, it is stated that the credit summation in the accounts of the appellant for the years 2008,

2009 and 2010 were Rs.15,64,403/-, Rs.11,52,860/- and Rs.11,91,269/- respectively and they were disproportionate to her known source of income. In her explanations, although the appellant had stated that her husband is also a salaried person, that she has received arrears under different heads during the relevant period and that all these amount came to her SB account, nothing was dealt with by the Enquiry Officer. Therefore, learned Tribunal held that the findings of the Enquiry Officer in respect of Charge No.7 is fallacious and therefore, the same has to be turned down. This finding is clearly wrong, because, in the report submitted by the Enquiry Officer, it is stated that there was no oral and documentary evidence adduced by the Bank to substantiate this charge, therefore, without any evidence, the charge has to fail. However, without taking note of this aspect, learned Single Judge has wrongly reversed the same, when it is consequent to the Charge Nos.1,4 and 6 as these charges were related to transactions in the appellant's account.

14. Coming to Charge No.5, it is stated that on 06.07.2010, she had transferred Rs.10,000/- into the credit of one Subramani maintained at Agraharam Branch without any voucher and subsequently, on 01.10.2010, by debiting Rs.10,000/- from his account, she had transferred to her account by removing the hold set by her on 21.08.2010. In her explanation, she had again stated that she had erroneously made a wrong credit entry into the account of one Subramani. It is seen that when the account holder-Subramani was traced out, he credited the said sum in his account and thereafter, he authorized the appellant to rectify the said mistake committed by her. Thus, it is crystal clear that she held the account of said Subramani sans any authority. Therefore, such negligence committed by her certainly would fall under minor misconduct as per Clause 7(C), therefore, as rightly held by the learned Tribunal, in respect of Charge Nos.3 and 5, the respondent bank is at liberty to impose punishment commensurate to the said charges.

15. This apart, on perusal of entire materials available on record, it is seen that although the respondent bank has alleged that those transactions were turned out to be prejudicial to the interest of the bank, nowhere they have stated that how these transactions came to be prejudicial to the interest of the bank. Therefore, in our considered view, the award passed by Tribunal is well within the ambit of law, therefore, the same cannot be quashed as concluded by the learned Single Judge.

16. In fine, for the reasons stated above, the impugned order passed by the learned Single Judge is set aside and the award passed by the 1st respondent Tribunal in I.D.No.79 of 2014 is confirmed and the 2nd respondent Bank is directed to reinstate

the appellant with full back wages and all other attendant benefits within a period of 4 weeks from the date of receipt of a copy of this order. Accordingly, W.A.No.4350 of 2019 stands allowed and W.A.No.4346 of 2019 filed by the appellant questioning the imposition of punishment proportionate to Charge Nos.3 and 5 stands dismissed. No Costs.

Sd/-
Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

rpp/rkm

To

1. The Presiding Officer,
   Central Government Industrial Tribunal
   cum Labour Court,
   Chennai-600 006.

2. The Deputy General Manager (B&O),
   State Bank of India,
   Appellate Authority,
   Administrative Unit,
   Kunrinji Complex, State Bank Road,
   Coimbatore-641 018.

3. Regional Manager (Region II),
   Disciplinary Authority,
   State Bank of India,
   Administrative Unit,
   Kurinji Complex, State Bank Road,
   Coimbatore - 641 018.

+2ccs to Mr.S.Bazeer Ahamed, Advocate SR.No.23520

+1cc to Mr.Balan Haridas, Advocate SR.No.23926

W.A.Nos.4346 & 4350 of 2019

NR(CO)
GMY(27/04/2022)