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W.P.No.34412 of 2002

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.34412 of 2002

All India Bharat Overseas Bank
Employees Union,
Reg.No.712
Habeen Towers,
756, Anna Salai,
Chennai – 600 002.

.... Petitioner

Vs

1. Central Government Industrial
Tribunal cum Labour Court,
rep. by its Presiding Officer,
Sasthri Bhavan,
Chennai.

2. Bharat Overseas Bank Ltd,
rep by its Chairman & CEO,
756, Anna Salai,
Chennai – 600 002.

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the concerned records from the respondents, quash the order dated 05.09.2001 of the 1st respondent in I.D.No.475A of 2001 holding that the domestic enquiry was fair and proper and the Award of the 1st respondent in I.D.No.475A of 2002 dated 15.04.2002 and consequently direct the 2nd



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respondent to reinstate the workman concerned in the dispute in I.D.No.475A of 2001 viz. Jayakaran Daniel with full back wages, continuity of services and all other benefits.

For Petitioner : Mr.Balan Haridas
For R2 : Mr.Anand Gopalan
for Mr.T.S.Gopalan & Co.,

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent in I.D.No.475A of 2001, thereby dismissing the Industrial Dispute raised by the petitioner as against the order of dismissal.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.

3. The petitioner Union raised Industrial Dispute, the issue related to non-employment along with the other demands of the petitioner Union. The following issue has been referred to Tamil Nadu State Industrial Tribunal, Chennai :

*“Whether the action of the management of
Bharat Overseas Bank Ltd., in terminating the services of*



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Shri Jayakaran Daniel is legal and justified ? If not, to what relief the concerned workman is entitled ?”.

4. The General Secretary of the petitioner Union was dismissed from service. One Mr.Jayakaran Daniel (Herein after referred to as “petitioner”) had joined in the second respondent Bank on 04.06.1979 and he was selected as Assistant General Secretary in the petitioner Union. Though the petitioner Union and the second respondent were maintaining a very cordial relationship, when one S.Srinivasan became a Chairman of the second respondent, there was a slide down in the relationship and the industrial relationship deteriorated because many excesses and anti employee measure have been committed by the management. Therefore, the petitioner Union filed writ petition and by an order of this Court, he was removed from his Chairmanship. Therefore, the second respondent Bank, being irked and not comfortable with the legitimate trade union activity of the petitioner Union, started a victimisation spree attitude. Therefore, the petitioner was issued with charge memo dated 06.09.1994. However, the said charge memo did not contain any basic documents for giving any explanation inspite of repeated requests. Thereafter, an enquiry was conducted and the Enquiry



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Officer held that the charge levelled as against the petitioner has been proved. Based on the enquiry findings, the petitioner was imposed with the penalty of dismissal from service. It was challenged before the first respondent and by an award dated 05.09.2001 in I.D.No.475A of 2001, it was held that the domestic enquiry was not conducted in a fair and proper manner. By the subsequent award dated 15.04.2002 in I.D.No.475A of 2001, the order of dismissal passed by the first respondent was confirmed. Hence, this writ petition.

5. The learned counsel for the petitioner would submit that the Award was passed without any basis and industrial dispute raised by the petitioner was dismissed without any fair reason. The domestic enquiry commenced on 06.03.1995 and it was adjourned to various dates without any development or not even recording enquiry proceedings as there was conciliation talks pending and as the Conciliation Officer had advised to defer the enquiry till conciliation process comes to an end. Therefore, there was no recording of enquiry proceedings for nearly one 1 ½ years. Only on 18.12.1995, once again the domestic enquiry started and even then the petitioner was not given an opportunity to defend the charges with assistance. Though the petitioner sought for an



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adjournment of the enquiry, it was denied. Therefore, exparte enquiry was conducted and it is a violation of principles of natural justice. The domestic enquiry was conducted in a biased manner and even the Enquiry Officer concluded that the petitioner was guilty of the charges levelled against him. Therefore, the enquiry was not conducted fairly and it was not proper. He further contended that the charge sheet was served to the petitioner nearly twelve years after the alleged incident. However, the petitioner was not suspended and even after the alleged incident the petitioner was permitted to work for two years i.e., till the order of dismissal was passed.

6. A perusal of the counter filed by the second respondent reveals that Mrs.Usha Srinivasan, who was working as Stenographer in the Personnel Department of the second respondent, was in the fourth floor of the premises. On 17.08.1994, the post of Chief Regional Manager was created and the Secretariat of the Chief Regional Manager was located in the second floor of the Head Office of the second respondent. On 31.08.1994, it was transferred to the Chief Regional Manager's Secretariat, which was functioning in the second floor of the very same premises. When the order of transfer was served to her at



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about 4.15 p.m. on 31.08.1994 by the Personnel Manager, she refused to accept the same and she said that only after taking instruction from the petitioner, she will receive the same. A few minutes later, the petitioner led a crowd to the Head Office, crashed the gate, barged into the cabin of Personnel Manager and protested against him for the transfer of Mrs.Usha Srinivasan. He also threatened to manhandle him if the transfer order was not withdrawn. They also resorted to a “pen down strike” from 10.00 a.m. to 1.30 p.m. on 01.09.1994, protesting against the transfer of Mrs.Usha Srinivasan. Again between 1.30 p.m. and 2.00 p.m. they gathered in front of the main entrance of the Head Office blocking the way and also shouted slogans against the second respondent Bank. They also held the demonstrations on 02.09.1994 and 03.09.1994. Therefore, the second respondent decided to initiate disciplinary action against the petitioner for his misbehaviour and unruly conduct of the workmen.

7. The second respondent also filed a suit in C.S.No.1130 of 1994 for injunction restraining the petitioner Union from carrying on the demonstration in the Bank's premises and obtained order of injunction. Thereafter, on 06.09.1994, the petitioner was served with charge memo



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for his misbehaviour towards the Personnel Manager on 31.08.1994.

Though the charge memo was served on the petitioner, he did not file any explanation and as such, an Enquiry Officer was appointed to conduct domestic enquiry. The petitioner was served with notice to participate in the enquiry. However, the petitioner repeatedly sought for adjournment and the enquiry was adjourned on so many occasions. After several adjournments, when the enquiry officer proceeded with the enquiry, the petitioner sought for time and made a request to engage a lawyer to assist him for enquiry. The said request was denied and the enquiry officer proceeded with the enquiry. Thereafter, the petitioner said he wants to take leave. Even after reference to the Medical Board, the petitioner did not appear for the medical examination. Therefore, the Enquiry Officer proceeded with the enquiry on 19.12.1995 and 20.12.1995.

8. In the meanwhile, the petitioner also filed a suit in C.S.No.1342 of 1995 for interim injunction restraining the second respondent Bank from passing any order of dismissal. After completion of enquiry, the Enquiry Officer submitted his report holding that the charges against the petitioner were proved. A copy of the enquiry report was also furnished to the petitioner and he was given opportunity to make



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his comments. On 06.05.1996, the petitioner submitted his reply.

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9. A perusal of the enquiry report, the Disciplinary Authority accepted the report submitted by the Enquiry Officer and concluded to impose the order of dismissal. Thereafter, the petitioner was asked to appear for personal hearing on 13.07.1996. The petitioner failed to appear before the Disciplinary Authority and as such, the proceedings were adjourned on two occasions. However, the petitioner failed to appear and without being satisfied with the explanation submitted by the petitioner, an order of dismissal was passed on 03.08.1996. The first respondent found that the enquiry was conducted in a fair and proper manner.

10. Insofar as the charge is concerned, the petitioner, being General Secretary of the Union, along with other employees, came to the Personnel Manager's cabin to raise the issue against the transfer of Stenographer Mrs.Usha Srinivasan and they also went on strike and demonstrations. Though misconduct of the petitioner was proved, the punishment imposed on the petitioner was not proportionate to the charges proved against him. However, after the incident the petitioner



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was permitted to work for two years i.e., till the order of dismissal. If at all the petitioner involved in other industrial dispute, he would not have continued in service till the order of dismissal. Therefore, the punishment of dismissal was not justified by the second respondent. Though the charges of misconduct were proved against the petitioner, by imposition of punishment of dismissal and the disproportionate to the gravity of proved misconduct.

11. Therefore, this Court is inclined to modify the punishment imposed by the first respondent. Accordingly, the punishment of dismissal is hereby modified to one of compulsory retirement. The petitioner is entitled for gratuity and provident fund till the date of his order of compulsory retirement. It is also made clear that he is also entitled for earned leave wages if any. These benefits shall be disbursed by the second respondent within a period of twelve weeks from the date of receipt of a copy of this order.

12. In view of the above, this Writ Petition stands partly allowed. There shall be no order as to costs.



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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order

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