



W.P.No.14393 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.14393 of 2010

WMP.No.1 of 2010

The South Indian Bank Ltd.,
Head Office, T.B.Road,
Mission Quarters,
Thrissur 680 001,
Kerala State rep. by its
General Manager.

... Petitioner

vs.

1.The Presiding Officer,
Central Government Industrial Tribunal,
Cum Labour Court, Chennai – 6.

2.A.Fredrick Constantine,

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in ID.No.30 of 2009 and quash its Award dated 19.01.2010.

For Petitioner : Mr.A.P.Venkatesh Prasad for
Mr.T.S.Gopalan and Co.

For R1 : (Tribunal) Court

For R2 : No Appearance



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ORDER

This Writ Petition is filed by the South Indian Bank, the employer of the second respondent, to call for the records of the first respondent in ID.No.30 of 2009 and quash its Award dated 19.01.2010.

2.The writ petitioner will be referred to as Bank and the second respondent as workman.

3.The workman joined the services of the Bank as a Clerk in 1979. While he was working in Trichy Branch, he indulged in various acts of misconduct and after due enquiry was dismissed from service on 25.01.1992. The workman challenging the dismissal order raised a dispute in ID.No.77 of 1995. The Labour Court vide award dated 30.11.2000 inspite of finding that the charges were proved modified the Punishment of Dismissal to one of placing the workman in a rank immediately below the post of Clerk. Thereafter the bank on 14.11.2002 offered the workman the Post of Peon and he joined the Anandavadi Branch, Trichy on 29.11.2002. The workman's conduct was unsatisfactory even thereafter and so his probation was extended



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by three months on three occasions. The workman was transferred to Ayyampettai Branch in December 2003 as it was felt that his attitude would change. The workman was confirmed on 29.03.2004. During his earlier tenure as a Clerk, the workman had availed several loans. At the time of his dismissal in the first instance on 25.01.1992, he owed the Bank Rs.59,245.23/-. In the suit O.S.No.526 of 1993 filed by the Bank for the recovery of the amount, an exparte decree was passed on 30.08.1995. After his appointment as Peon in November 2002, Rs.1,000/- was deducted every month from his salary towards the decreetal dues. As huge amount was outstanding, the Bank suggested to the workman to avail fresh loan and pay the outstanding loan. The workman declined to accept the suggestion and so the Bank was constrained to take steps for speedy recovery of the decreetal dues. Accordingly, the Bank decided to deduct Rs.3,000/- per month towards decreetal dues from January, 2006.

4.The workman even after demotion to the post of Peon did not mend his ways. On 16.02.2006, the workman availed sick leave and went to the Bank to encash a cheque. There were 17 customers waiting in the counter and the workman started shouting at them saying that they would get better



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service in the nearby State bank of India Branch. On 17.02.2006 and

18.02.2006 also the workman went to the Bank and behaved similarly. On

20.02.2006, the workman applied for leave from 16.02.2006 to 04.03.2006.

On the same day at about 3.30 p.m. he went in a drunken mood to the Bank

and started shouting at the Branch Manager and the Clerk by using abusive

language. He tried to smash the counter and hit the Clerk with his chappals.

He bolted the main door of the Bank from outside and left. The door was

later opened with the help of outsiders. The matter was reported to the

Regional office and he was suspended pending enquiry on 15.03.2006. The

Disciplinary Proceedings were initiated and a show cause notice calling for

explanation to the charges was issued on 27.04.2006. He submitted his

explanation on 24.05.2006. As his explanation was found unsatisfactory, the

enquiry was conducted and he was given an opportunity to participate in the

same with the assistance of a Advocate. The enquiry officer after enquiry

submitted his report on 22.01.2007 holding that the charges were proved.

The second show cause notice was issued on 28.02.2007 calling for

explanation on the proposed punishment. He sent his reply and thereafter the

Punishment of Dismissal from service was imposed vide order dated

23.03.2007. The workman challenged the same by raising a dispute in



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ID.No.30 of 2009. As the workman did not appear before the Labour Court despite several opportunities, the Labour Court passed the Ex-parte Award on 19.01.2010. The Labour Court though found that the enquiry proceedings were conducted fairly and properly and that the charges were proved, nevertheless interfered with quantum of Punishment. The Labour Court on sympathetic grounds modified the Punishment of Dismissal from service imposed by the Bank to one of compulsory retirement. Aggrieved by the Award of the Labour Court, the Bank has filed the above writ petition.

5.As the notices sent to the workman returned unserved, the Bank filed M.P.No.1 of 2013 for substituted service through paper publication. The M.P. Was allowed on 19.03.2014 and inspite of service through paper publication, the workman has not appeared even before this Court.

6.The learned counsel for the Bank submitted that the Labour Court erred in interfering with the quantum of punishment even when it found that the charges were proved and the termination was justified. The learned counsel further submitted that the reasons given by the Labour Court for interfering with the punishment were not based on any acceptable principles



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but on mere sympathy and hence not sustainable. The learned counsel relying on the judgment of the Hon'ble Supreme Court in ***Karnataka Bank Ltd. Vs. A.L.Mohan Rao*** reported in ***2006 (1) MLJ 987*** and ***Tata Engineering and Locomotive Co. Ltd. Vs. N.K.Singh*** reported in ***2007-I-LLJ*** submitted that the award of the Labour Court should be set aside.

7.I have heard the learned counsel for the Bank and I have perused the materials placed on record.

8.The Labour Court recorded in its Award that the workman did not choose to prosecute the case even after service of notice. The Labour Court noting that the workman was permitted the assistance of a lawyer which was normally not done in domestic enquiry, found that the enquiry proceedings were conducted fairly and properly and that the findings of the enquiry officer were not vitiated or perverse. The Labour Court taking a sympathetic view of the matter interfered with the quantum of Punishment modifying the same from dismissal from service to compulsory retirement with a view to benefit the workman.



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9.The point to be considered is whether the Labour Court is justified in interfering with the quantum of punishment.

10.In the present case, it is seen that the workman on an earlier occasion was dismissed from service for similar misconduct of indiscipline and on challenge by the workman, the Labour Court found that the charges were proved but took a lenient view and directed the Bank to reinstate the workman to a rank below the post of Clerk.

11.From the averments made in the writ petition and the counter to the claim petition, it is seen that even after appointment to the lower post, the workman indulged in similar misconduct like shouting at the customers, abusing the branch Manager as well as the Clerk, trying to smash the counter using fist, using abusive language against the Clerk, trying to hit the Clerk with chappals, and bolting the front door of the bank from outside. The aforesaid conduct of the workman is not only serious in nature but also subversive of discipline in the Bank. The Bank after conducting a proper and fair enquiry dismissed the workman from service. The Labour Court found the enquiry to be proper, legal and fair. The finding of the enquiry officer on



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the charges were also held to be not vitiated by perversity. Under the circumstances, in my view the Labour Court ought not to have interfered with the punishment and that too an mere sympathy.

12.The learned counsel for the petitioner relied on the Judgment of the Hon'ble Supreme Court in the case of **Karnataka Bank Ltd. Vs. A.L.Mohan Rao** reported in **2006 (1) MLJ 987**. The relevant para is as follows:

“6.In our view, a gross misconduct of this nature does merit termination. We fail to see what other type of misconduct would merit termination. It is not for the Courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such a misconduct, it could never have been said that termination of service is not the appropriate punishment.”

13.The learned counsel further relied on the Judgment of the Hon'ble



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Supreme Court in the case of ***Tata Engineering and Locomotive Co. Ltd. Vs.***

N.K.Singh reported in ***2007-I-LLJ***. The relevant paragraph No.10 is extracted hereunder:

“We find that the Labour Court has found the inquiry to be fair and proper. The conduct highlighted by the management and established in inquiry was certainly of very grave nature. The Labor Court and the High Court have not found that misconduct was of any minor nature. On the contrary, the finding on facts that the acts complained of were established has not been disturbed. That being so, the leniency shown by the Labour Court is clearly unwarranted and would in fact encourage indiscipline....”

14.The acts of misconduct like shouting at the customers, abusing the branch Manager as well as the Clerk, trying to smash the counter using fist, using abusive language against the Clerk and trying to hit the Clerk with chappals in a drunken mood and bolting the front door of the bank from outside were held to be proved by the Bank in the enquiry and even the



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Labour Court did not interfere with the same. In my view, the Labour Court ought to have seen that the workman was a Bank employee and the misconduct committed by him was grave in nature. It is settled in law that when the misconduct is grave in nature, it should be left to the Management to decide on the fit punishment. The Court's merely on misplaced sympathy ought not to interfere with the punishment. In the present case in the earlier proceedings leniency was shown to the workman but inspite of the same, he continued with his subversive conduct. The acts of misconduct committed by the workman were unbecoming of a Bank employee and therefore in my view the Labour Court ought not to have interfered with the Punishment of Dismissal from service imposed by the Bank.

15.In the light of the above discussions, the award of the Labour Court is set aside and the writ petition is allowed. However there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

24.07.2023

Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order
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N.MALA, J.

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