



W.P.No.8426 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.09.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.8426 of 2010

Bank of Maharashtra,
Rep. by its Assistant General Manager,
No.4, Sivagnanam Road,
T.Nagar, Chennai-600 017.

...Petitioner

Vs.

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

2.Sunder Singh Asirvatham

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records from the file of the 1st respondent in I.D.No.35/2006 and to quash its award dated 27.11.2009.

For Petitioner : Mr.Prasad Vijaykumar
for Mr.S.Jayaraman

For Respondents : R-1 – Tribunal
R-2 – Mr.K.M.Ramesh
for K.G.Vipranarayanan



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ORDER

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The management has filed the above writ petition challenging the order of the Labour Court dated 27.11.2009 in I.D. No. 35 of 2006, modifying the punishment imposed by the management as follows:

"15. Resultantly, the punishment of compulsory retirement is set aside and instead the punishment of bringing down by one stage in the scale of pay for 2 years without cumulative effect be imposed on the petitioner. Consequently the Respondent shall reinstate the petitioner into service forthwith with 75% back wages, continuity of service and all other attendant benefits, and therefore he be visited with the punishment as above."

2. The facts of the case are that, the 2nd respondent as a sub staff of Tuticorin branch of the petitioner bank was subjected to disciplinary enquiry and was found guilty of the charged misconduct. The disciplinary authority after following due procedure, passed a final order of punishment imposing the following punishment

"The punishment of dismissal without notice in respect of charge No.1, bringing down by one stage lower in the existing scale of pay with cumulative effect in respect of charge No.2 and bringing down by one stage lower in the existing scale of pay without cumulative effect in respect of charge No.3 and censure in respect of charge No.4."



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3. The petitioner preferred an appeal before the Appellate Authority and the Appellate Authority vide his order dated 22.01.2004, modified the punishment with respect to the 1st charge, from that of dismissal to one of compulsory retirement. In respect of charges 2, 3 and 4, the same were confirmed. The Appellate Authority further directed that all the punishments would run concurrently. Aggrieved by the order of the Appellate Authority dated 22.01.2004, the 2nd respondent raised an Industrial Dispute and on failure of conciliation, the same was referred to the Labour Court in I.D.No.35 of 2006.

4. The Labour Court found that the respondent having confessed the misconduct before the enquiry officer, and in the absence of clear and cogent evidence that the confession was given under coercion could not challenge the enquiry report. The Labour Court on its finding that the punishment was shockingly disproportionate to the misconduct, interfered with the punishment by modifying the punishment of compulsory retirement into one of reduction of one stage in the scale of pay of two years with cumulative effect and further directed the petitioner bank to reinstate the respondent with 75% backwages, continuity of service and all other attendant benefits.



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5. Aggrieved by the award of the Labour Court in so far as it relates to interference with punishment imposed by the petitioner, the petitioner bank has filed the above writ petition for the aforesaid relief.

6. The learned counsel for the petitioner submitted that the Labour Court committed illegality in substituting the punishment imposed by the disciplinary authority by invoking Section 11-A of the Act. The learned counsel further submitted that the jurisdiction to invoke Section 11-A for interfering with the punishment would arise, only if the punishment was one of dismissal or discharge. As in the present case, the punishment imposed by the disciplinary authority was one of compulsory retirement, the Labour Court had no jurisdiction to interfere with the same under Section 11-A.

7. The learned counsel for the respondent on the other hand supported the award passed by the tribunal and sought dismissal of the petition. The learned counsel submitted that an order of compulsory retirement was a form of discharge and therefore the Labour Court was justified in invoking Section 11-A of the I.D. Act.



8. I have heard both the learned counsels and have perused the materials placed on record.

9. The issue in the writ petition is whether the Labour Court was justified in interfering with the punishment under Section 11-A.

10. In my view the issue whether the Labour Court under Section 11-A can interfere with the quantum of punishment where the punishment imposed by the Disciplinary Authority was neither discharge nor dismissal is no longer *res integra*. The Hon'ble Supreme Court in the case of *South Indian Cashew Factories Workers' Union vs. Kerala State Cashew Development Corpn. Ltd. And Others* reported in 2006 (5) SCC 201 in para 16 of the Judgment held as follows:

"16. If the enquiry is fair and proper, in the absence of any allegations of victimisation or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed. Section 11-A of the Act gives ample power to the Labour Court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section 11-A of the Industrial Disputes Act is only applicable in the case of dismissal or discharge of a workman as clearly mentioned in the section itself..."



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11. In the aforesaid Judgment, the Hon'ble Supreme Court has further held that, the Labour court can interfere with the quantum of punishment only when there was want of good faith, victimisation and unfair labour practice on the part of the management. In the present case, there is no allegation of victimisation or unfair labour practise. In my view, the misconduct committed by the 2nd respondent was a serious one in that the respondent had removed three cheque books without the knowledge of the officials of the bank and issued a cheque for Rs.20,000/- to a person, which was returned for want of sufficient funds. Further, the respondent had not surrendered the unused cheque leaves of the stolen cheque books. The conduct of the respondent was unbecoming of a bank employee. The respondent having admitted his guilt and the Labour Court having found that the admission was voluntary, it is clear that the charges are proved.

12. The Labour Court having found that the enquiry proceedings were conducted fairly and properly and that the charges were proved, in my view erred in interfering with the quantum of punishment. On the facts of the case and in view of the law laid down by the Hon'ble Supreme Court, I am of the view that the award of the Labour Court cannot be sustained.



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Accordingly the writ petition is allowed. The award passed by the Labour Court in I.D.No. 35 of 2006 dated 27.11.2009 is set aside. There shall be no order as to costs.

22.09.2023

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

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Bank of Maharashtra,
No.4, Sivagnanam Road,
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2. The Presiding Officer,
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N.MALA,J.

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