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W.A.No.782 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**  
**and**  
**THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

Writ Appeal No.782 of 2022

1. Union of India,  
Rep. The Director of Postal Services,  
O/o. Postmaster General,  
Chennai City Region,  
Chennai 600 002.
2. The Superintendent of Post Offices,  
Kanchipuram Division,  
Kanchipuram.
3. The Presiding Officer,  
Central Government Industrial Tribunal-cum-  
Labour Court,  
Chennai 600 006.

.. Appellants

Vs.

Mr.A.Jayaraman

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 30.03.2021 in WP.No.22190 of 2013 passed by the Single Judge of this Court.

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For appellants : Mr.G.Ilangovan  
For respondent : Mr.D.Muthukumar  
for M/s.Paul and Paul

### JUDGMENT

(The Judgment of the Court was delivered by S.VAIDYANATHAN, J)

The present appeal has been preferred by the Director of Postal Services, Union of India challenging the order dated 30.03.2021 of the learned Single Judge in WP.No.22190 of 2013 in setting aside the award of the Labour Court in I.D.No.8 of 2012, dated 18.10.2012.

2. The sum and substance of the case on hand is that the employee concerned in this appeal was a Postmaster at Salem District and he is said to have committed misappropriation. After receipt of deposits, there was an entry in the passbook and the post office seal was also affixed in the said passbook, but according to the employee, it was done by some other person without his knowledge. The factum that the amount remitted by the customers have not been entered in the ledgers in the post office, is not in dispute. The Postmaster is the custodian of the seal. Before issuing charge



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sheet, a preliminary investigation was conducted, statements have been obtained, based on which, charges have been framed against the employee.

3. The case of the employee was that he had rendered 13 years of unblemished service and the charges have been foisted against him for no fault of him. In the domestic enquiry, the preliminary enquiry report had been filed and after detailed enquiry, charges have been held to be proved by the Enquiry Officer based on which, the disciplinary authority imposed the punishment of removal from service, which was confirmed in appeal.

4. Questioning the removal from service, an industrial dispute was raised and upon failure of conciliation, the matter was referred for adjudication by the the Ministry of Labour vide its order dated 24.01.2012, which reads as below:

*"Whether the action of the management of Director of Postal Services/Superintendent of Post Office Kanchipuram Division in imposing the punishment of removal from service upon Sr.A.Jayaraman, an Ex-Gramin Dak Sevsk is just and legal? What relief the workman is entitled to?"*



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5. The main contention of the employee before the Tribunal as well as before the learned Single Judge was that the depositors have not been examined and the preliminary report cannot be taken into account for the purpose of deciding the issue. In support of his contention, he also relied upon the judgment of the Supreme court in the case of ***Nirmala J. Jhala vs. State of Gujarat and another*** reported in **2013 4 SCC 301**:

*"41. In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the enquiry officer, the High Court on administrative side as well on judicial side, had placed a very heavy reliance on the statement made by Shri C.B. Gajjar, Advocate, Mr. G.G. Jani, complainant and that of Shri P.K. Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.*



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42. *A Constitution Bench of this Court in Amalenda Ghosh v. North Eastern Railway, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary enquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.*

....

...

45. *In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.*

....

....

49. *The issue, as to whether in the instant case the material collected in preliminary enquiry could be used against the appellant, has to be considered by taking into account the facts and circumstances of the case....."*



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6. According to the employee, he did not question the domestic enquiry as the Management has not filed the documents pertaining to the preliminary issue. Further, the enquiry officer acted in a biased manner and the punishment imposed on the employee is disproportionate to the so-called misconduct framed against him. He would further submit that the enquiry findings are based on the preliminary investigative statement. The findings of the enquiry officer placing reliance upon the preliminary investigative statement runs counter to the decision of the Apex Court in ***Nirmala J. Jhala*** (mentioned supra).

7. The employer contended that non-examination of the depositors will not vitiate the domestic enquiry in the light of the judgment of the Apex Court in ***J.D.Jain vs. Management of State Bank of India and Others*** reported in ***1982 1 SCC 143***, wherein it is held that even the hearsay evidence is admissible in domestic enquiry. The relevant portion of the said judgment reads as follows:

*"9. The learned Tribunal, it appears, was obvious of the fact*



*that it was examining the evidence in a domestic enquiry, and not the evidence in a criminal prosecution entailing conviction and sentence.*

*In a case like the one before us, three kinds of proceedings against the delinquent are possible:*

- (i) departmental proceedings and action,*
- (ii) criminal prosecution for forgery and misappropriation,*
- (iii) civil proceedings for recovery of the amount alleged to be misappropriated.*

*The respondent herein adopted course (i) and instituted the domestic enquiry in which the principle applied by the Tribunal is not applicable; in such an enquiry guilt need not be established beyond reasonable doubt; proof of misconduct may be sufficient.*

*The learned Tribunal has committed another error in holding that the finding of the domestic enquiry was based on "hearsay" evidence. The law is well-settled that the strict rules of evidence are not applicable in a domestic enquiry.*

*This Court in the case of State of Haryana and Anr. v. Rattan Singh reported in MANU/SC/0332/1997: (1982) 1 LLJ 46 SC, held:*

*It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials*



*which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility."*

8. In the present case, according to the employer, there is a documentary evidence to show that there was misappropriation and the employee alone is responsible for the date stamp impression obtained in the passbook of the account holder. That apart, the sister of the employee has deposited amount. Thus, the punishment of dismissal for the misconduct is proved just.

9. Heard both sides and perused the materials available on record.

10. The facts that there was an employer-employee relationship and the employee was placed under suspension for the misconduct referred to supra and upon preliminary investigation, a detailed enquiry was conducted and the employee was imposed with the punishment of removal from service, are not in dispute. The argument of the employee that the judgment of *Nirmala case (referred to supra)* is applicable to the facts of this case is



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not correct. In that case, the judicial officer concerned was not put on notice about the preliminary investigation and the records collected behind his back were relied upon and it was concluded that the officer has committed misconduct. However, it is not so in the present case.

11. In the case on hand, the preliminary investigation report was placed before the Enquiry Officer, which was taken note of by the Enquiry Officer and the same has been reflected in the proceedings. The employee had enough opportunity to demolish the case, which was not done so. It is the duty of the employer to establish the charges. However, the facts that there was an entry with regard to the amount received by the employee and he has affixed seal in the pass book and that there was remittance of Rs.3,000/- by the employee, are not in dispute.

12. Heavy reliance was made by the employee with regard to paragraph 6 of the learned Single Judge, which is extracted below:

*"6. The Labour Court had erroneously proceeded on the*



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*basis that examination of complaints is not a legal imperative in all cases especially when the evidence based on which the finding of guilty is arrived at is based on documentary evidence. Even for this purpose, it should be proved that the petitioner has made entries in the passbook in his own handwriting. In the absence of any proof that the entries made in the passbook or in the other Post Office records are that of the petitioner's handwriting, it cannot be construed that the documents are proved. Without any proof of actual deposit of money, forcing of delinquent to prove the non accounting is nothing but forcing a party to prove the negative. Therefore, the finding of the Labour Court is absolutely based on no evidence and on presumption and with prejudice mode. Therefore, in the event of failure to prove the deposit of money through the evidence of depositors and failure to prove the misappropriation committed by the petitioner is based on no evidence and thereby, illegally unsustainable. The petitioner has made several lapses in the procedure adopted by the Enquiry officer."*

13. Even assuming for the sake of argument that we accept the said findings of the learned Single Judge, the matter will have to be remanded back to the Labour Court or Tribunal for fresh consideration. The employee



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had conveniently not questioned the domestic enquiry as the document with regard to the preliminary enquiry was not filed before the Labour Court.

But, the enquiry report was a part of the domestic enquiry, which reveals that the employee had an opportunity with regard to preliminary investigation and that there was sufficient opportunity given to cross examine the evidence tendered therein.

14. The employee, in paragraph 13 of the claim statement, has referred to remittance of the amount. Paragraph 17 of the claim statement is very clear that the preliminary enquiry conducted was available in the domestic enquiry as stated supra and hence, there is no need for the deponents to come and tender evidence and the hearsay evidence is also acceptable. Assuming that we are going to accept paragraph 6 and 7 of the order of the learned Single Judge, even then, the matter will have to be remanded back and an opportunity will have to be given to both parties to put forth documentary and oral evidence, in which case, the employer is bound to produce those documents to establish their case.

15. In a decision reported in *Indian Bank, Rep. by its General Manager, Madras -vs- K.S.Gurumoorthy and another, reported in 1990 II*



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**LLN 355** a Division Bench of this Court granted relief to a employee of

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Indian Bank, holding that the Indian Bank is amenable to the Writ Jurisdiction. Similarly, in the case on hand, normally, the document, which has not been filed before the Labour Court cannot be looked into by the High Court, in the light of the judgment reported in **1992 II LLN 101 [Madras Aluminium Ltd., -vs- Labour Court, Coimbatore and another]**.

Since the Postal Department is amenable to the Writ Jurisdictional it is a state within the meaning of Article 12 of the Constitution of India and assuming that the employee had filed the Writ Petition directly before this Court, we can look into the document, more so, preliminary report. The contention of the employee that the preliminary investigation report cannot be relied upon may be correct, provided the same has not been produced in the domestic enquiry or relied upon behind the back of the employee, but, that is not the case here. The finding of the Labour Court that the charges are proved and that there was misappropriation by the employee holding that the misappropriated amount may be small or large, yet, the conduct is relevant with regard to the punishment imposed, is just. Hence, we are of the view that the award of the Labour Court imposing the punishment of



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removal from service is perfectly justified and the order of the learned Single Judge in interfering with the award on technical ground is liable to be set aside. Hence, the order of the learned Single Judge is set aside.

16. We make it very clear that the employee has not been deprived of his Provident Fund and no orders have been passed invoking Section 4 (6) of the Payment of Gratuity Act 1972 to depose gratuity. The employee would be entitled to his Provident Fund share and Gratuity amount together with statutory interest, which shall be released within a period of three months from the date of receipt of a copy of this judgment.

17. With the above observation and directions, this writ appeal is allowed. No costs.

(S.V.N.J.) (R.K.M.J.)  
19.04.2023

Speaking Order: Yes / No  
pvs  
**To**  
The Labour Court, Chennai



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