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W.A.No.962 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-03-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.962 of 2022

1.Chief Manager,
Indian Overseas Bank,
IR Department, P.B.No.3765,
763, Anna Salai,
Chennai – 600 002.

2.Senior Manager (Disciplinary Authority),
Indian Overseas Bank,
Inquiry Cell,
IR Department, P.B.No.3765,
763, Anna Salai,
Chennai – 600 002.

...

Appellants

-VS-

1.G.Anbukili

2.The Registrar,
Central Industrial Tribunal-cum-Labour Court,
Shastri Bhavan, Haddows Road,
Chennai – 600 006.

...

Respondents



Appeal is filed under under Clause 15 of the Letters Patent against the order, dated 28.01.2022, passed in W.P.No.12109 of 2017, on the file of this Court.

For Appellants : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co.

For Respondent 1 : Mr.Sai Srujan Tayi,
for M/s.P.V.S.Giridhar and Sai Associates.

For Respondent 2 : Mr.R.Subramanian,
Central Govt.Standing Counsel.

JUDGMENT

(By S.Vaidyanathan,J.)

This appeal has been preferred against the order of the learned single Judge, dated 28.01.2022, passed in W.P.No.12109 of 2017.

2. The admitted case of the parties is that the first respondent employee joined the services of the appellant Bank as a Messenger on compassionate ground on 08.01.1994. Later, she was issued with a Charge Memo, dated 22.03.2013, stating that by means of a bogus School Certificate stating that she had studied up to VIII Standard in April,1976, she gained employment in the Bank and thereby committed a gross misconduct. Based on a detailed inquiry, she was dismissed from service on 28.04.2014. Questioning the order of dismissal, an industrial dispute was raised and, pursuant to a reference, the dispute was adjudicated by the Central Government Industrial Tribunal-



cum-Labour Court, Chennai, which, by award, dated 29.06.2016, relying upon Ex.M-17, letter of the Headmaster of the School, which is extracted below, confirmed the dismissal order passed by the appellant Bank. Ex.M-17 reads as under :

*"From :
The Headmater,
Ti.U.A.E.School,
Poolangurichi,
Tirupattur Taluk,
Sivagangai District.*

*To :
The Branch Manager,
Indian Overseas Bank,
Regional Office,
Karaikudi.*

Sir,

*Sub : Admission No.336, 10.06.1968, pertaining to
authenticity - Explanation Letter – reg.*

Ref: Your Letter dated 31.07.2012 and 06.10.2012.

*As per the records of the Ti. U.A.E. School Poolangurichi School,
Admission No.336-Anbukili, I hereby inform that there are no records
which show that she studied in the School between 10.06.1968 and
10.06.1975.*

*Sd/-
01.02.2013*

*Place : Poolangurichi
Date : 11.01.2013*

*The Headmaster,
Tirupattur Panchayat Union
Elementary School,
Poolangurichi.*

Copy :

- 1.Office of District Primary School,SVG*
- 2.Office of Upper Primary School, TPR."*

Aggrieved over the award passed by the Labour Court, the respondent employee filed the Writ Petition and the learned single Judge allowed the Writ Petition, granting the entire benefits due to the employee, interpreting Ex.M-17, extracted supra, and stating that non-availability of the records pertaining to the respondent's education from 10.06.1968 to 01.06.1975, is totally different from the finding that the respondent had not studied in the school during the relevant period. Aggrieved by the order passed by the learned single Judge, the appellant Bank has filed this appeal.

3. Ex.M-17, letter, mentioned supra, was marked as an exhibit with the consent of the respondent employee. A reading of the said letter would make it clear that as per the school records, there is no record to show that the respondent employee had studied in the school from 10.06.1968 to 10.06.1975. The employee has also stated that her brother and father had gone to the school and collected the certificate from the school authorities. Paragraph 11 of the award of the Labour Court is extracted below for a ready reference :



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"11.Before this Tribunal also, though petitioner had the opportunity, she did not make any attempt to show that the document produced by her is genuine. On the other hand, in the Claim Statement itself, she has repeated that her father and brother had gone to the school and collected the certificate from the school authorities. If the petitioner had actually studied in the concerned school up to 8th standard, it would have been easy for her to establish it. The allegation made against the petitioner being that she has obtained job by producing bogus certificate is a very severe one and the petitioner could have taken steps to produce the real certificate if any was available. On the other hand, she has closed her evidence merely detailing her difficulties because of her non-employment. Even during her examination, what she has stated is that the certificate was obtained by her father and brother. She has not stated even in the affidavit that she has studied in the concerned school during the relevant period and that the certificate is a genuine one. On the other hand, her affidavit is only an attempt of evasion. No doubt, the Respondent has the burden to establish that the certificate is not genuine. This burden was sufficiently discharged by marking the document in the enquiry proceedings. Along with is the version of the petitioner justifying the case of the Management. There is no reason to find fault with the report of the enquiry. Having obtained job using a bogus document, dismissal was the natural consequence. Any lesser punishment is out of question in the circumstances also. The petitioner is not entitled to any relief."



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4. On perusal of the award, it is very clear that the respondent employee, even though had an opportunity to rebut the contention of the management Bank, did not do so either in the enquiry proceedings or before the Tribunal/Labour Court to produce and contend that the document was genuine. The employee had failed to establish that the certificate produced by her was a genuine one. Though the initial burden was on the employer to prove that the certificate was bogus, they have discharged the burden by calling for the document, namely, Ex.M-17. Even though the employee had joined the service in the year 1994, the contention of the appellant Bank is that only on the basis of a communication, dated 28.12.2012, given by a third party, they started investigating into the certificate and found that it was not genuine.

5. On 16.03.2023, this Court passed a detailed order, modifying the punishment imposed by the Labour Court into one of compulsory retirement, holding that the learned Judge ought not to have interfered with the punishment imposed by the employer, however found to be excessive. Thereafter, the decision of the Apex Court in the case of *Kerala Solvent Extractions Ltd v. A.Unnikrishnan*, reported in 2006 (13) SCC 619, was brought to our attention by the learned counsel for the appellant Bank. Since the judgment was not signed by us, this matter is posted today under the caption "for being mentioned".



6. The Apex Court, in the case of *Kushalbhai Ratanbhai Rohit v. State of Gujarat*, reported in (2014) 9 SCC 124, has categorically held that when an order is passed by a judge and duly signed by him/her, he/she becomes *functus officio* and it cannot be modified even by means of an application to recall the said order and it could be done only by means of a review. The Apex Court also held that before signing the orders, the judges are entitled to take a different view on the subject.

7. Mr.Sai Srujan Tayi, learned counsel for the respondent employee, would submit that in the light of Exs.ME2 and ME3, marked before the Inquiry Officer, the Tribunal ought not to have placed reliance on ME7 and come to the conclusion that the punishment imposed by the employer was appropriate. He would also contend that a misinterpretation has been given to the letter given to the Bank, dated 01.02.2013, wherein it is stated that the respondent has not studied in the school. However, taking into account the school records that the workman had not studied between 10.06.1968 and 01.06.1975, the Labour Court came to the conclusion that the management Bank was right in holding that the respondent did not study VIII Standard in the school, mentioned supra.

8. The Supreme Court, in *W.M.Agnani v. Badri Das*, 1963 (1) LLJ 684, held that if a particular view is taken by a Court and that another view is possible, the High Court cannot take that view, holding that yet another view is possible.



9. In *LIC of India v. R.Dhandapani*, 2006 (13) SCC 613, the Supreme

Court held as under :

"7. It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11- A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and



demude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. [1994 (1) SCALE 631)].

9. Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law."

10. In Kerala Solvent Extractions Ltd. v. A. Unnikrishnan, 2006 (13) SCC 619, the Supreme Court held as under :

"4. The Labour Court by its award dated 23rd March, 1992 held that the conduct of the respondent did not amount to false representation. The Labour Court held:

'According to the management if the candidates who acquired more qualifications than what is required in the notification are appointed there are so many practical difficulties as the qualification prescribed for the supervisors is only SSLC failed. But it is to be noted that the qualification is not the criterion to supervise and control the subordinate. There is no question of complex or any other things would arise if a supervisor is supervising and controlling his subordinate who acquired more qualifications than that of the supervisors. Therefore the contention of the management that if the more qualified persons are appointed as Godown badli there would be so many practical difficulties would arise will not hold good.'

5. In the appellant's writ petition preferred against the award, the learned Single Judge of the High Court rightly disapproved the above view of the Labour Court and said:



"...Workers were expected to give correct information as to their qualification. They failed to do so. They were in fact over qualified and therefore ineligible to apply for the job. It has been stated that applications received from some overqualified candidates were rejected. The petitioner as also the workers are bound by the terms of Ext. P1 which had to be given effect to. Over qualification is certainly, in the circumstances, a disqualification, which aspect the first respondent failed to grasp. Ext. P10 in these cases is unsustainable and is accordingly set aside."

6. But, the learned Single Judge said that there would be no hardship or prejudice caused to the appellant if the respondent was' reinstated. The learned Single Judge said:

"... As a special case and not by way of a precedent, the petitioner shall not implement the dismissal order and let the two workers continue in employment as directed."

7. Accordingly, the writ petition came to be dismissed. The appellant preferred a writ appeal in the High Court against this order of dismissal. The Division Bench of the High Court persuaded itself to the view that such illegality and irregularity as obtained in the Labour Court's order did not render it obligatory for the High Court to interfere, and that this case was not a fit one for interference under Article 226. The dismissal of the writ petition was supported on this view.

8. The writ appeal came to be dismissed.

9. Sri Vaidyanathan, learned senior counsel for the appellant submitted, in our opinion not without justification, that the Labour Court's reasoning bordered on perversity and such unreasoned, undue liberalism and misplaced sympathy would subvert all discipline in administration. He stated that the Management will have no answer to the claims of similarly disqualified candidates which might have come to be rejected. Those who stated the truth would be said to be at a disadvantage and those who suppressed it stood to gain. He further submitted that this laxity of judicial



reasoning will imperceptibly introduce slackness and unpredictability in the legal process and in the final analysis, coyrode legitimacy of the judicial process.

10. We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

11. The scope of this Court under Article 226 of the Constitution is very limited and this Court can modify the punishment if the same is disproportionate to the gravity of the misconduct. The learned single Judge ought not to have set at naught the finding rendered by the Labour Court.

12. It has been contended that the complainant has not gone into the witness box and hence it cannot be taken that charges are proved and that the complainant has given a complaint to CBI only due to personal animosity, which resulted in the loss of compassionate appointment, that has been given to the respondent, who lost her husband in the year 1994.

13. We find that the interpretation to the letter given by the learned single



Judge is not correct, as it is crystal clear from Ex.M-17 that the Headmaster categorically stated that there was no record to show that the respondent employee, namely, G.Anbukili had studied in the school. Hence, the finding of the learned single Judge is contrary to the evidence placed before the Tribunal/Labour Court and it needs to be interfered with and the award of the Labour Court has to be restored. Since it appears from the evidence that the certificate produced by her is not genuine, we are of the opinion that there should be cessation of employer-employee relationship.

14. The Supreme Court, in *J.D.Jain v. The Management of State Bank of India and Another*, 1982 (1) SCC 143, held, that, in labour matters, even hearsay evidence is admissible. The contention that nothing has come out on the complaint given to CBI cannot be accepted, as CBI cannot go into the departmental proceedings and, at the most, it can forward the complaint to the Bank, which they have done, based on which, action has been taken.

15. Hence, we sustain the award of the Labour Court and set aside the order of the learned single Judge.

16. Writ Appeal is allowed. No costs. Consequently, the connected C.M.P.No.6190 of 2022 is closed.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order

(S.V.N.,J.) (R.K.M.,J.)
28-03-2023

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To

The Registrar,
Central Industrial Tribunal-cum-Labour Court,
Shastri Bhavan, Haddows Road,
Chennai – 600 006.

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S.VAIDYANATHAN,J.
AND
R.KALAIMATHI,J.

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