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W.A.Nos.859 and 861 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.04.2023

Pronounced on : 18.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND**

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

**W.A.Nos.859 and 861 of 2023
and
C.M.P.Nos.8402 and 8406 of 2023**

1.The Post Master General
Chennai City Region,
Chennai-600 002.

2.The Director of Postal Services,
Chennai City Region,
Chennai-600 002.

3.The Superintendent of Post Offices,
Vellore Division,
Vellore-632 001.

... Appellants in both W.As.,

Versus

1.M.Pandiyan

2.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court,
First Floor, "B" Wing,
26, Haddows Road,
Shastri Bhavan,

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Chennai-600 006.

... Respondents in both W.As.,

PRAYER : Writ Appeals are filed under Clause 15 of Letters Patent against the common judgment dated 14.02.2022 in W.P.Nos.18785 and 32959 of 2015.

For Appellant : Mr.V.Balasubramanian

For Respondents : Mr.Balan Haridas[R1]
R2- Labour Court

JUDGMENT

(Judgment was delivered by R.KALAIMATHI, J.,)

Being aggrieved by the Common Order passed by this Court in W.P.No.18785 of 2015 (filed by the employee) and in W.P.No.32959 of 2015 (filed by the Post Master General, Chennai City Region, Tamil Nadu), the Post Master General has preferred these writ appeals.

2. The employee was working as Branch Post Master at Marudavallipalayam Branch Post Office coming under Virinjipuram Sub-Post Office at Vellore postal division.

3. Originally a charge memo dated 19.03.2003 was issued by the Superintendent of Post Offices (Management) to the 1st respondent



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M.Pandiyan, the then Branch Post Master of Marudavallipalayam post office at Vellore on the ground that he omitted to credit to the Savings Bank Account of two depositors viz., Tmt.Rajammal and Tmt.Thangammal. The Enquiry Officer gave a finding that the two charges were held to be not proved.

4. Whereas, the Management took a view that there is a clear documentary proof for the charge and nothing substantial has been brought out against this during the course of enquiry and the workman was removed from the service by the proceedings dated 31.10.2011 which was passed by the Senior Superintendent of Post Offices, Vellore Division, Vellore.

5. The workman raised an industrial dispute vide I.D.No.63 of 2014 before the Central Government Industrial Tribunal, Chennai, wherein, an award was passed on 31.03.2015 to the effect that the respondents are directed to reinstate the petitioner in service within a month from the date of the award with 25% back wages, continuity of service and other attendant benefits. Aggrieved of the same, as he was denied 75% of the back wages, the workman filed a writ petition in

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W.P.No.18785 of 2015. The Management also filed a writ petition challenging the above said award in W.P.No.32959 of 2015.

6. Heard the rival submissions of the learned counsels appearing for the Management and the workman. Perused the materials available on record.

7. Apart from reiterating the grounds mentioned in the writ appeals, Shri.V.Balasubramanian, the learned Senior Panel Counsel appearing for the Management would vehemently argue that the workman has committed misappropriation to the tune of Rs.66,697/- and he was proceeded under Rule-10 of GDS (C&E) Rules, 2001. After enquiry, he was removed from service. It was argued that the workman accepted the total sum of Rs.1,100/- on different dates from Smt.Thangammal, who is a Recurring Deposit Account holder and he has failed to issue counterfoils of pay-in-slip to the depositor. He would further argue that the employee accepted an amount of Rs.7,200/- on different dates from another woman namely Smt.Rajammal, who is holding Savings Bank Account and failed to account for them and also failed to issue counterfoils of pay-in-slip to the depositor and instead obtained thumb

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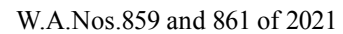


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impression of the depositor in a white paper on three days for the deposits and thereby failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001. It is his arguments that the Disciplinary Authority held that based on the evidence adduced in the enquiry proceedings, though he disagreed with the findings of the Enquiry Officer with reference to the charges No.1 and 2, the Disciplinary Authority passed an order imposing penalty of removal from service. The workman's appeal against the said order was also dismissed. He would stress upon the fact that the charge against the workman was satisfactorily established in the departmental enquiry and the Order of Disciplinary Authority removing him from service is based on sound reasons.

8. Mr.Balan Haridas, learned counsel appearing for the 1st respondent would strenuously contend that the employee joined service on 25.05.1994 Extra-Department Branch Post Master of Marudavallipalayam Branch Post Office in Virinjipuram Sub-Post Office, Vellore Post Division. He was said to be discharging his duties without room for any complaint. He was put off from duty with effect from 04.07.2002. A memo was issued and upon his explanation, not being

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9. As per Rule 14 of CCS, CCA Rules-1965, it postulates that instead of recording the evidence of prosecution witnesses afresh, wherever it is possible, the statement of witness already recorded during preliminary investigation may be read out to the workman at the enquiry.

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Marudavallipalayam, the workman received Rs.1,100/- on various dates

from the said Smt.Thangammal for the purpose of depositing the said amount in her Recurring Deposit Account and in fact he did not bring the same under the said deposit. It is the evidence of Smt.Thangammal that the statement was not read over to her and the same was not admitted as correct in the enquiry. As contemplated under Rule-14 of CCS (CCA) Rules, if that be the case, the statement given in the preliminary enquiry cannot be taken for consideration.

10. Though one Shri.P.Margabandu was examined as SW2 by the Department on 28.01.2010, it is his evidence that Ex.S.C.1's statement dated 26.06.2002 was not recorded as per the version of Smt.Thangammal. The retired mail overseer who is said to have recorded the said statement namely Shri.R.Munusamy, SW5 would claim that he verified the recurring deposit pass book of Smt.Thangammal and the workman did not make endorsements to that effect.

11. It is the evidence of DW1 Mr.V.S.Vijayakumar that he collected the pass book and on verification, he gave satisfactory report. Therefore,
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we are of the view that the above said person's evidence is bristled with contradictions. Shri.C.Jayaraju-SW7, the then A.S.P. Vellore East Sub-Division, states that the verification was done by the above said two mail overseers namely R.Munusamy and V.S.Vijayakumar, though the Enquiry Officer has held that the first charge was not proved, and he has not held so.

12. Insofar as the second charge is concerned, the workman failed to account the total sum of Rs.7,200/- received from Smt.Rajammal on various dates and failed to bring into her S.B.Account No.VRM 1742601. It is the evidence of Smt.Rajammal-SW3 that she does not know her account number and she was ignorant of details of Ex.SE4, it is the statement purported to be given by her on 16.08.2002. It is pertinent to note that she had completely resiled from what is stated by her. She also failed to identify her thumb impression in the S.S.Book. She too would state Ex.SE4 statement purported to have been given by her, was not read over to her and she did not confirm the correctness of the statement. So a million dollar question arises as to how Ex.SE4 could be relied upon when she has given such an evidence. It is the evidence of supporting witness of Suguna-SW4 that she does not know the

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deposition. It was not written in her presence and she would further state

that the thumb impression in Ex.SE4 was not obtained in her presence.

She would go to the extent that she did not see Smt.Rajammal at all.

13. The case of the Management is that she was examined by the retired mail overseer Shri.Thanikachalam-SW6. It is his evidence that as Smt.Rajammal is an illiterate, he recorded Ex.SE4 and her left thumb impression was obtained by him. On the other hand, he would state that it was not written in her presence and it was not read over to her. It is relevant to note that the statement namely Ex.SE4 did not contain the signature of the above said witness Ms.Suguna, this was also admitted by SW6-Shri.Thanikachalam.

14. It is so discernible that the statements of the above said Shri.Thanikachalam and Smt.Rajammal were not recorded in accordance with the above said Rules. This was clearly brought about by the said witnesses and also the retired mail overseers as mentioned supra. Therefore, as discussed elaborately, Smt.Thangammal and Smt.Rajammal both have stated not in consonance with the respective charges and moreso, it is the evidence of the supporting witness that

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SW2 Shri.Margabandhu that Ex.SE1 statement dated 26.06.2002 was not recorded as per version of the said Smt.Thangammal and he went to the extent of stating that the said statement was not at all recorded by Shri.R.Munusamy.

15. So also, insofar as Smt.Rajammal is concerned, apart from her evidence to the effect that she does not know her account number and the details of Ex.SE4 purported to be the statement given by her on 16.08.2002, that she does not know who wrote the said statement, that the said statement was not written in her presence, also not read over to her and she was unable to identify her left thumb impression found in the savings book. Supporting witness namely Smt.Suguna, SW4's evidence also to the effect that the statement was not written in her presence and also Smt.Rajammal was not there when she signed in Ex.SE4 as witness and she does not know what was written in Ex.SE4. Therefore, in the facts and circumstances, their evidences will not help to strengthen the case of the employer. However, on what basis, comments on disagreement note was called for is not understandable. Ultimately, there is no iota of evidence available on record before the Enquiry Officer against the employee.

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16. It is relevant to refer to the judgment of the Hon'ble Supreme 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



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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."

17. With regard to awarding of relief of back wages, the three Judge Bench of Hon'ble Supreme Court in ***Hindustan Tin works Private Limited v. Employees of Hindustan Tin Works Private Limited***, reported in ***(1979) 2 SCC 80***, in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilisation of full installed capacity by the Petitioner. The dispute raised by the employees resulted

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in award of reinstatement with full back wages. It has been held that in the very nature of things, there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure.

18. In ***M.P. State Electricity Board v. Jarina Bee***, reported in **(2003) 6 SCC 141**, the two Judge Bench referred to ***P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar*** reported in **(2001) 2 SCC 54**, held that it is always incumbent upon the Labour Court to decide the question relating to quantum of back wages by considering the evidence produced by the parties. The said observation of the Hon'ble Supreme Court was reiterated in ***U.P. State Brassware Corporation Ltd., vs. Uday Narain Pandey*** reported in **(2006) 1 SCC 479**, the two Judge Bench observed as follows:

"No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would,



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however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in the contravention of the provisions of Section 6N of the U.P. Industrial Disputes Act."

19. Therefore, in 1960s and 70s reinstatement of service and payment of full back wages on dismissal order having been found invalid would follow as a matter of course. But there is a change in the legal approach now. In general, the workman who is terminated from service and willing to get back wages is expected to plead and make statement before the Court of first instance that whether he is gainfully employed or not. On the other hand, in such a case, the employer has to plead, by cogent evidence to prove that the workman was gainfully employed and he was getting wages equivalent to the wages he was drawing prior to the termination from service. These principles are based on Section 101 of the Evidence Act. The settled law is that one who pleads has to prove. In fact, it is possible to prove the positive fact. If the workman states that he is not gainfully employed, then the onus lies on the employer who has to plead and prove that the employee was gainfully employed.

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20. So we are of the considered opinion that the concurrent findings of both labour Court and this Court to the effect that the order of removal of service of the workman is bad in law owing to insufficiency of evidence is affirmed and the workman is ordered to be reinstated with 50% back wages and other attendant benefits.

21. With the aforesaid observations, (i) the Writ Appeal filed by the Management in W.A.No.859 of 2023 stands disposed of and W.A.No.861 of 2023 is partly allowed.

(ii) The Order of this Court dated 14.02.2022 passed in W.P.No.18785 of 2015 is modified into one of 50% back wages with other attendant benefits.

(iii) The Appointing Authority shall pass appropriate Orders as to the reinstatement of the workman back into services within a period of three months from the date of receipt of copy of this judgment. There shall be no order as to costs. Consequently, connected civil miscellaneous petitions are closed.

(S.V.N.J.,) (R.K.M.J.,)
18.07.2023



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Index:Yes/No
Speaking/Non-Speaking Order
ssn

To

The Presiding Officer,
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Cum Labour Court,
First Floor, "B" Wing,
26, Haddows Road,
Shastri Bhavan,
Chennai-600 006.



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S.VAIDYANATHAN, J.,

and

R.KALAIMATHI, J.,

ssn

Pre-Delivery Judgment in

W.A.Nos.859 and 861 of 2023

and

C.M.P.Nos.8402 and 8406 of 2023

18.07.2023