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W.P.No.23238 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No. 23238 of 2016
and
W.M.P. No. 19932 of 2016

Namakkal Co-operative Urban Bank Ltd.,
rep by its Managing Director,
No.47, Rangar Sannathi Street,
Namakkal.

.. Petitioner

Versus

1. The Presiding Officer,
Labour Court,
Salem.

2. The General Secretary,
Salem Mandala Anithu Panialargal Sangam,
Reg.No.944/slm, 44-A, Mariamman Koil Street,
Balaji Avenue, Asthampatty,
Salem – 7.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to
issue Writ of Certiorari, calling for the records of the award in I.D.No.113 of
2012 dated 28.10.2014 on the file of the first respondent quash the same.

For Petitioner : Mr. M.S. Palaniswamy
For Respondents : Labour Court (R-1)
No appearance (R-2)

ORDER



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This Writ Petition is filed by the Deputy Registrar cum Managing Director, Namakkal Co-operative Urban Bank Limited, Namakkal, assailing the order dated 28.10.2014 passed in I.D. No. 113 of 2012 on the file of the first respondent/Labour Court, Salem.

2. According to the Writ Petitioner, one K. Sundar was a member of the second respondent Sangam. The said K. Sundar joined as Clerk-cum-Cashier in Ganeshapuram Branch of the Writ Petitioner Bank. During the course of his duty, a sum of Rs.3,66,736/- was credited into the account of the Writ Petitioner Bank in cash. The entire amount was accounted for by the said K.Sundar along with P.Ammaiappan and both of them deposited the amount in the Bank Locker. However, two days thereafter, on 26.09.2005 when the General Manager of the Bank opened the locker and counted the amount, he found that there was a deficit of Rs.8,502/-. In this context, an order of suspension was passed against the said K. Sundar on 29.09.2005. On 30.11.2005 a charge memo was issued, for which the said K.Sundar submitted his explanation on 12.01.2006. Not being satisfied with the explanation, an Enquiry Officer was appointed. The Enquiry Officer submitted his report on 10.02.2006. On 22.02.2006, enclosing the report of the Enquiry Officer, a



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second show cause notice was issued to the said K.Sundar. On 03.03.2006, an explanation was submitted by the said K.Sundar to the second show cause notice and not satisfied with the explanation, an order dated 28.04.2006 was passed dismissing the said K. Sundar from service. Aggrieved by the same, the said K. Sundar preferred a revision under Section 153 Co-operative Societies Act before the Joint Registrar of Co-operative Societies, Namakkal Region, Namakkal. The Joint Registrar of Co-operative Societies, by order dated 10.11.2006, remanded the matter back to the Writ Petitioner Bank for fresh consideration. Accordingly, a fresh enquiry was conducted by appointing another Enquiry Officer. The second Enquiry Officer, after conducting an enquiry, submitted his report on 20.06.2007. Enclosing the copy of the report of the second Enquiry Officer, the second show cause notice dated 25.07.2007 was issued to which the said K. Sundar submitted his explanation on 15.10.2007 and 26.11.2007. Considering the explanation so offered, on 03.01.2008, final order was passed by which punishment of increment cut for three years with cumulative effect was imposed on the said K.Sundar.

3. Aggrieved by the punishment of increment cut for three years imposed against the said K. Sundar, the second respondent/Sangam opted for conciliation on behalf of the said K. Sundar. The conciliation failed and



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ultimately a failure report was submitted. Thereafter, the second respondent raised a dispute before the first respondent in I.D. No. 113 of 2012 on behalf of the said K. Sundar.

4. The first respondent labour Court, though concluded that a fair enquiry was conducted against the said K.Sundar, passed the impugned order reducing the punishment further into one of increment cut for one year with cumulative effect. Assailing the order passed by the first respondent/Labour Court, the Management has come forward with this Writ Petition.

5. The learned counsel appearing for the writ petitioner would vehemently contend that when once the Labour Court has concluded that a fair enquiry has been conducted against the said K. Sundar, reduction of punishment imposed by the Writ Petitioner bank further is not warranted. For reducing the punishment imposed by the Writ Petitioner Bank, the first respondent/Labour Court has not assigned any strong reason. However, the first respondent has casually and mechanically passed the order to reduce the punishment into one of increment cut for a period of one year. This according to the learned counsel for the Writ Petitioner is contrary to the settled principles of law. In this context, the learned counsel for the Writ Petitioner



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placed reliance on the decision of the Hon'ble Supreme Court of India in (2013)

10 SCC 185 (*Davalsab Husainsab Mulla -vs- North West Karnataka Road Transport Corporation*).

6. The learned counsel for the Writ Petitioner also placed reliance on the decision of the Hon'ble Supreme Court of India in (2000) 7 SCC 517 (*Janatha Bazar -vs- Secretary*) and contended that when once the first respondent/labour court is satisfied with the manner in which the disciplinary enquiry was conducted against the said K.Sundar, the first respondent ought to have refrained from interfering with the punishment imposed by the Writ Petitioner/Bank. Accordingly, the learned counsel for the Writ Petitioner prayed for allowing the Writ Petition.

7. Even though, notice was served, there is no representation for the second respondent/Sangam.

8. This Court heard the submissions of the learned counsel for the petitioner and perused the materials placed on record, including the order passed by the labour court, which is impugned in this writ petition.



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9. At the outset, this Court finds enormous force in the submissions of the learned counsel for the petitioner.

10. The facts narrated above would disclose that the earlier punishment of dismissal from service imposed by the petitioner Bank against the said K.Sundar was set aside and the matter was remanded back to the petitioner bank by the revisional authority namely the Joint Registrar of Co-operative Societies in the revision filed by the said K.Sundar under Section 153 of the Tamil Nadu Co-operative Societies Act, with a direction to reconsider the order of punishment. Thereafter, a second Enquiry Officer was appointed and on the basis of his report, the Petitioner Management has imposed the punishment of increment cut for a period of three years with cumulative effect. However when the second respondent society has raised I.D.No.113 of 2012, the first respondent Labour Court has further reduced the punishment. It is seen from the order passed by the first respondent/Labour Court that the first respondent has subjectively satisfied with the adequacy and manner in which the departmental enquiry was conducted against the said K.Sundar by the petitioner bank. In other words, it is not the findings of the labour court that the enquiry conducted against the said K. Sundar is farce.

11. Even, this Court is also of the view that pursuant to the order



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passed by the Joint Registrar of Co-operative Societies, Namakkal Region,

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Namakkal, a second Enquiry Officer was appointed, who, after giving an opportunity to the delinquent/K.Sundar, submitted his report. Therefore, it is evidently clear that the disciplinary enquiry conducted against the said K.Sundar is not a farce. Based on the order passed by the second Enquiry Officer, the punishment of dismissal from service, which was imposed earlier against the said K.Sundar, was re-visited and a reduced punishment of increment cut for three years was imposed by the Writ Petitioner/Management. In other words, in the touch stone of principles of natural justice, a disciplinary enquiry was conducted, in which due opportunity was given to the delinquent to put forth his defence. In fact, the said K.Sundar has not raised any industrial dispute as against the punishment of increment cut for three years. However, the second respondent Sangam, by stepping into the shoes of the said K.Sundar, has raised the industrial dispute. In any event, when once the Labour Court found that the disciplinary enquiry was conducted in a proper manner, in which adequate opportunity was given to the delinquent/K.Sundar, it is no longer open to the first respondent/Labour Court to interfere with the quantum of punishment imposed by the Petitioner/Bank. In this context, in the decision of the Hon'ble Supreme Court of India relied by the learned counsel for the petitioner it was clearly held that the Labour Court, after having arrived



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at the conclusion that a disciplinary enquiry was conducted in a proper manner, it is not open to the Labour Court to substitute the penalty imposed by the employer. The relevant portion of the order passed by the Hon'ble Supreme Court in (2000) 7 SCC 517 (**Janatha Bazar -vs- Secretary**, reads as follows:-

“6. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, maybe for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari [(1996) 2 SCC 714 : 1996 SCC (L&S) 539 : (1996) 33 ATC 238] .) In U.P. SRTC v. Basudeo Chaudhary [(1997) 11 SCC 370 : 1998 SCC (L&S) 155] this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs 65 to the Corporation by



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issuing tickets to 23 passengers for a sum of Rs 2.35 but recovering @ Rs 5.35 per head and also by making entry in the waybill as having received the amount of Rs 2.35, which figure was subsequently altered to Rs 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corpn. Ltd. v. Kala Singh [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434] this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp. 161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.

7. In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and,



therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the management.”

12. Similarly, the Hon'ble Supreme Court in **(2013) 10 SCC 185 (Davalsab Husainsab Mulla -vs- North West Karnataka Road Transport Corporation)**, also reiterated the same principles and held as follows:-

“15. Therefore, in the case on hand, the conduct of the employee towards the establishment as well as its fellow employees and higher authorities was highly condemnable and, therefore, there was absolutely no scope for exercising the discretionary power vested in the Labour Court under Section 11-A of the Act. The Labour Court, therefore, rightly declined to exercise the said jurisdiction vested in it in his favour. Unfortunately, the learned Single Judge by merely stating that the Labour Court had only considered the interest of the Corporation and not the interest of the employee set aside the said award which was correctly rectified by the Division Bench. The Division Bench was, therefore, well in order in having set aside the order of the learned Single Judge and restoring the order of dismissal passed against the appellant. We too, therefore, do not find any scope to interfere with the order impugned in this appeal.”



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13. In the light of the above ratio laid down by the Honourable Supreme Court, this Court is of the view that the first respondent/Labour Court is not justified in interfering with the quantum of punishment imposed by the Petitioner/Bank. This Court is therefore of the view that the punishment imposed on the said K.Sundar is proportionate to the nature of charges levelled and proved against him. Accordingly, the order passed by the first respondent/Labour Court is set aside and the punishment of increment cut for three years with cumulative effect imposed by the Management is restored.

14. In the result, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

14.06.2023

Index : Yes/No

Internet : Yes/No

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V.BHAVANI SUBBAROYAN,J.

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To

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Labour Court,
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