IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON	**:**	**18.04.2023**
ORDERS PRONOUNCED ON :		**01.06.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. No.660 of 2013
and M.P.Nos.1 to 3 of 2013

The General Manager
Indian Bank, Head Office
No.66, Rajaji Salai, Chennai – 600 001.
Presently shifted to II Floor, HRM Department
254-260, Avvai Shanmugam Salai
Royapettah, Chennai – 600 014. ...
Petitioner

-vs-

1.The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court, Chennai – 6.

2.Indian Bank Employees' Association
Rep.by its General Secretary
No.6, Moore street, Mannady
Chennai – 600 001.
...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in

I.D.No.52 of 2011 and quash its Award dated 21.06.2012.

For Petitioner	:	Mr.Anand Gopalan for M/s T.S.Gopalan & Co.
For Respondents	:	Mr.K.M.Ramesh, Senior Counsel for Mr.K.Bharathi for R2 R1 - Court

ORDER

Challenging the Award dated 21.06.2012 passed in I.D.No.52 of 2011, the petitioner Bank is before this Court.

2.The petitioner Bank is having a branch at Ponnai, Vellore District, where the concerned workman – R.K.Srinivasalu, was working as a Cashier. It is the system of maintenance of accounts in any Branch is that, all receipts and payments of cash made during the day will have to be tallied with every entry in the accounts should be supported by a voucher and that all debit entries should match the credit entries recorded in a day.

3.It is averred in the affidavit of the Writ Petition that on 15.02.2005, when the concerned workman was working as a Cashier, had received an amount of Rs.7,503/-, towards the credit of jewel loan account Number.

209904137 of one Babu, he noted the cash receipt number as 19 in the jewel loan credit challan and also released the challan, without noting or making entry in his cash book, but on the same day, he had received an amount of Rs.27,500/- for the credit of SB Account Number. 8576, in which, he already marked it as cash receipt number 19 and noted the same in his rough cash book. This particular credit cash challan for Rs.7,503/- towards jewel loan account was directly sent to Jewel Loan Section, without routing it through the Cash Scroll Officer and on receipt of the said voucher, the Branch Manager closed the jewel loan account and handed over the jewel to the borrower, along with counterfoil, duly signed by the concerned workman.

4.Though the cash balance for that day was tallied, as per the rough cash book and cash scroll, the difference of Rs.7,503/- was detected, while writing the day book. It was then found that the amount of Rs.7,503/- towards the jewel loan account of Babu was received by the concerned workman, after making the receipt number as 19 in the counterfoil and affixed the stamp in the cash receipt and signed the counterfoil for having received the cash. Since the amount was not accounted in the bank's books, the said amount must have been retained by the concerned workman, as excess amount, that it was not accounted as excess cash, at the end of the day and that he has not reported the excess cash to the Branch Manager, but misappropriated the same.

5.For the above act, a show cause notice was issued to the concerned workman on 27.10.2005 and a Charge Sheet was issued on 19.01.2006, containing the following charges:-

(i)That on 15.02.2005, you have received Rs.7,503/- towards credit of Jewel loan account No.209904137 of Mr.Babu, marked the voucher as receipt No.19, signed the counterfoil and affixed the cash received seal of the branch for having received the amount, but not accounted the same in Bank's book (rough cash book).

(ii) That since the amount of Rs.7,503/- was received by you, it should have been with you as 'Excess Cash'. But the same has not been reported to the Asst. Manager/Branch Manager and not accounted in the Sundry Deposit Ac., on that day as 'Excess Cash'. Thus, by not accounting the said amount of Rs.7,503/- in the Bank's Books, you have misappropriated the said amount on 15.02.2005.

6.The workman submitted his reply, pleading that there was no excess cash with him on the particular day, then on the next day, when he was informed of cash shortage of Rs.7,503/-, he immediately remitted the cash and that he never intended to cause loss to the Bank.

7.On 12.07.2006, the Enquiry Officer submitted his report, holding that the concerned workman had received a sum of Rs.7,503/- towards the closure of the jewel loan account No.209904137 of one Babu, but without accounting it in the rough cash book, he misappropriated the amount and that he had destroyed the relevant voucher in order to escape from the fraud committed by him were proved.

8.Copies of the Enquiry Report was furnished to the concerned workman and based on his representation, the Disciplinary Authority passed orders on 13.12.2006, awarding the punishment of compulsory retirement upon the workman. Aggrieved against the punishment of compulsory retirement, the concerned workman preferred an appeal before the Appellate Authority and the same was rejected.

9.On failure of conciliation, by an order dated 31.05.2011, the issue of imposing punishment of compulsory retirement was referred to the 1st respondent and before the 1st respondent, the concerned workman was examined as W.W.1 and Ex.W1 to W.15 were marked on behalf of the concerned workman. On the side of the petitioner Bank Ex.M1 to M.45 were marked.

10.Considering the materials and the submissions of the learned counsel on either side, the 1st respondent has passed an Award dated 21.06.2012 holding that it is not an instance of insistence on proof beyond doubt required to fasten liability on the workman, but it is a case, where some legal evidence, which is necessary to establish the guilt on him is lacking and that therefore, it is a hard case to find that the workman is guilty of the charges and accordingly set aside the punishment of compulsory retirement and ordered for reinstatement of the workman, without back wages.

11.The learned counsel for the petitioner Bank would submit that on 16.02.2005, when the Branch Manager confronted the concerned workman with the copy of the counterfoil obtained from the borrower, he confirmed that the Receipt No.19 written on the counterfoil was his initial and handwriting. Thus it became evident that the concerned workman had received Rs.7,503/- to the credit of Jewel Loan Account of Babu, but he failed to account the same, nor he had report any excess, at the time of closure of cash balance of the branch, at the end of the day. Even otherwise, the challan duly cleared by the workman had not reached the Scroll Officer and had gone to the Section, then at the end of the day, he would have had an excess amount of Rs.7,503/- and certainly it would have been traced and entered also in the Scroll. Therefore, the Officials at the Jewel Loan Section cannot be found fault with, for releasing the jewel on the basis of challan cleared by the workman, evidencing payment in the discharge of the jewel loan. The maintenance of the scroll by the Officer is only to ensure that the entries made in the Rough Cash Book are duly accounted at the Officer level. It is only a step in the system, apart from entries in the Rough Cash Book maintained by the workman and there should be corresponding entries maintained at the Officer level also. Therefore, the missing of challan could not have taken place, other than at the instance of the workman, as he has to account for the money which he had received, as evidenced by the counterfoil available with the borrower. Therefore, the acts of the workman clearly attracts the charges levelled against him.

12.The learned counsel for the petitioner would further submit that in an industry, where honesty and integrity are the requirement, such kind of acts brings disrepute to the organization and loss of customer confidence in the Bank. Thus, the Bank, being the custodian of public money cannot tolerate such behaviour. The charges levelled against the workman were proved during the enquiry proceedings and the Disciplinary Authority has rightly imposed the punishment of compulsory retirement, after appreciating all the witnesses and evidences on record.

13.The learned counsel for the 2nd respondent would submit that it is the duty of the prosecution to disprove the contention, about the excess payment by producing the witnesses. The prosecution ought to have examined the Branch Manager, to establish the charges beyond all reasonable doubt that the vouchers were kept not under lock and key and that the entry was not found place on the date of the incident. Secondly, the prosecution ought to have brought to the notice of the petitioner Bank, the apparent variation in the texture and handwriting if any in the challan. In the absence of any of the above, charges are left to mere guessing, conjecture, presumption and assumption. As far as destroying the voucher, no one has deposed about the same that the workman destroyed the voucher containing the relevant entries. In all fairness, benefit of doubt must naturally be extended to the workman. Therefore, the learned counsel prayed to dismiss the Writ Petition.

14.Heard the learned counsel for the petitioner Bank and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

15.The main ground put forth by the workman is that if the workman had been guilty of having not entered the amount of Rs.7,503/- in the Rough Cash Book with a view to misappropriate the same, he would not have left the branch early. As he would have been the last person, to leave the branch, waiting to ascertain that his unethical act has not been found out. All these facts clearly goes in favour of the workman that he is not invariably guilty of the charges levelled against him. Regarding the missing of the main challan, which was allegedly there till the leaving of the workman, but was detected to be missing after his leaving, cannot be a valid circumstance to pinpoint the workman as having removed the same or having destroyed it. Fastening liability on the workman, for the missing of voucher as being taken away by him and destroyed it, is also not on any evidence or any logically probative material leading to such a conclusion that he alone could have done it, is also again on mere surmise and conjecture. Suspicion is not a substitute for proof. Here in this case, there is no legal evidence to conclude that the workman had any guilty intention to do any misconduct. Thus, the 1st respondent/Labour Court has rightly found that the workman is not guilty of all the charges, set aside the punishment of compulsory retirement and ordered for reinstatement with continuity of service and all other attendant benefits, but without backwages and the same does not warrant any interference at the hands of this Court.

16.Accordingly, the Writ petition filed by the Bank is devoid of merits and the same is dismissed. The award of the Labour Court dated 21.06.2012 in I.D.No.52 of 2011 is confirmed. No costs. Consequently connected miscellaneous petitions are closed.

01.06.2023

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Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
Neutral citation : Yes/No

To
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cum Labour Court, Chennai – 6.

2.The General Secretary
Indian Bank Employees' Association
No.6, Moore street, Mannady
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J.NISHA BANU, J.,

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Pre-Delivery order in

W.P. No.660 of 2013

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