



W.P.No.35708 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 26.07.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**W.P.No.35708 of 2016  
and  
W.M.P.No.30693 of 2016**

The Chairman,  
The Tamil Nadu Grama Bank,  
No.6, Yercaud Road,  
Hasthampatti,  
Salem - 636 007.

... Petitioner

**Vs.**

1. The Presiding Officer,  
Central Government Industrial Tribunal-cum-  
Labour Court,  
1<sup>st</sup> Floor B Wing,  
26, Haddows Road,  
Shastri Bhavan,  
Chennai - 600 006.

2. R.Kumar

... Respondents

(petitioner amended vide W.M.P.No.21626 of  
2023 in W.P.No35708 of 2016 by order dated  
26.07.2023 by MDIJ)



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**PRAYER :** Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for records of the order passed by the first respondent in I.D.No.91 of 2011 by the Central Government Industrial Tribunal-cum-Labour Court, 1<sup>st</sup> Floor B Wing, 26 Haddows Road, Shastri Bhavan, Chennai - 600 006, the 1<sup>st</sup> respondent herein, quash the award dated 14.02.2014.

For Petitioner : Mr.Umashankar  
for M/s.J.Jayakumar and Associates

For Respondents : R1 - Court  
Mr.K.M.Ramesh, Senior Counsel  
for Mr.S.Apuna for R2

### **ORDER**

The present Writ Petition has been filed challenging the award dated 14.02.2014 made in I.D.No.91 of 2011 by the petitioner Bank wherein the Central Government Industrial Tribunal-cum-Labour Court / first respondent had directed reinstatement of the second respondent in service with 25% backwages, with continuity of service and all other attendant benefits.

2. The case of the petitioner Bank is that the second respondent was employed with the petitioner Bank from the year 1988 onwards. In the



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course of employment, the second respondent had indulged in act of misappropriation, subsequently a charge memo dated 23.11.2007 was issued upon him, for which, the second respondent submitted his reply. Not satisfied with the explanation, an enquiry was ordered. The second respondent participated in the enquiry and gave his defence statement. Based on the enquiry report, the second respondent was found guilty for misappropriation of money and after a second show cause notice, the petitioner Bank by letter dated 15.12.2008 imposed the punishment of removal from service. On 14.02.2009, the second respondent preferred an appeal before the Board of Directors which was also rejected. Subsequently, the second respondent raised an Industrial Dispute in I.D.No.91 of 2011 before the first respondent / Industrial Tribunal. The Industrial Tribunal, on considering the facts and circumstances and the materials placed before it came to the conclusion that since the amount of misappropriation was paltry, the delinquent act can at best be treated as only dereliction of duty and that being not so serious, the punishment imposed against the second respondent was disproportionate. Hence, the Industrial Tribunal directed the



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petitioner Bank for reinstatement of the second respondent with 25% backwages along with continuity of service and all other attendant benefits.

3. The learned counsel appearing for the petitioner Bank vehemently contends that the Industrial Tribunal had erred in not considering the finding of the Enquiry Officer's report and the evidence let in by the Petitioner Bank. The Labour Court had proceeded on the principle of probabilities and hence, the award is not sustainable. Though the charge of misappropriation was framed by the petitioner Bank, the Tribunal converted the same to one of dereliction of duty and set aside the punishment. The conclusion arrived at by the Industrial Tribunal is not substantiated with any evidence and therefore, the award is liable to be set aside. That apart, the Tribunal ought not to have interfered with the quantum of penalty especially when enquiry was held in a fair and proper manner. Raising the above grounds, the learned counsel for the petitioner Bank seeks to set aside the impugned award.



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4. The learned Senior Counsel appearing for the second respondent submitted that the second respondent had rendered unblemished service for more than two decades and that the slightest inadvertence on his part amount only to dereliction of duty and that the evidence of MW1 and MW2 in fact substantiate the case of the second respondent. That apart, there is no clinching or convincing evidence regarding the malafide intention of the second respondent of misappropriating the amount. Only because there was a shortage of Rs.1,000/- when remittance was entered, guilt was cast on the second respondent. Therefore, the Industrial Tribunal considering that the only fault that could be attributed against the second respondent without doubt is that he failed to verify the challan while making the entries regarding remittance and that this was only inadvertence or omission on the part of the second respondent which amounts to dereliction of duty. Therefore, the award passed by the Industrial Tribunal is to be sustained. It is further stated by the learned Senior Counsel that the second respondent was not gainfully employed elsewhere during the interregnum.



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5. At the time of admission of the Writ Petition, this Court vide order dated 02.03.2018 had ordered for payment of 17B wages to the second respondent.

6. This Court has carefully considered the award passed by the Labour Court as well as the submissions made by the learned counsel appearing for both sides.

7. Considering the charge levelled against the second respondent it can only be treated as a dereliction of duty and for such minor misconduct, major punishment such as dismissal of service cannot be awarded. This principle is well settled in the case of ***Prem Nath Bali – Vs – High Court of Delhi*** reported in ***2015 (16) SCC 415***. The only fault that can be attributed against the second respondent is that, he failed to verify the challan while making the entries regarding remittance. This inadvertence / omission on the part of the employee cannot be fastened with a dismissal. Therefore, this Court is of the view that, the award passed by the Labour



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Court directing reinstatement of the employee need not be interfered with.

However, the award of the Labour Court with respect to backwages, the second respondent has not averred anything in his claim petition about his not being gainfully employed and without any adjudication, the Labour Court awarded backwages, which is liable to be set aside, as the employee is not entitled for any backwages and accordingly, the same is set aside. But the 17B wages ordered by this Court and paid to the employee need not be recovered. Since the award passed by the Labour Court is confirmed, the petitioner Bank shall reinstate the second respondent into service within a period of four weeks from the date of receipt a copy of this order.

8. The Writ Petition is disposed of in the above terms. No costs.

Consequently, connected Miscellaneous Petition is closed.

**26.07.2023**  
**(2/2)**

NCC: Yes / No  
Index : Yes / No  
Speaking Order : Yes / No  
vji



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To

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**M.DHANDAPANI, J.**

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