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W.A.Nos.330 and 331 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.11.2024
Pronounced on	27.11.2024

CORAM :

THE HONOURABLE Mr.JUSTICE **R.SUBRAMANIAN**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN****W.A.Nos.330 and 331 of 2022****and****C.M.P. Nos. 2617 and 2627 of 2022****W.A. No. 330 of 2022**

The General Manager,
State Bank of India,
Region-II,
Chennai.

... Appellant

Vs.

1. The Central Government Industrial
Tribunal-cum-Labour Court,
Block No.1, Sastry Bhavan,
Chennai – 600 034.

2. R.Nagarajan

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to allow the appeal and set aside the order dated 13.09.2021 in W.P. No. 9575 of 2010.



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For Appellant : Mr. Anand Gopalan

For Respondents : Labour Court (for R1)

Mr. K.M.Ramesh,
Senior Advocate
for Mr. M.Ravi (for R2)

W.A. No. 331 of 2022

The General Manager,
State Bank of India,
Region-II,
Chennai – 1.

... Appellant

Vs.

1. R.Nagarajan

2. The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
Sastry Bhavan,
Chennai – 600 034.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to allow the appeal and set aside the order dated 13.09.2021 in W.P. No. 19713 of 2010.

For Appellant : Mr. Anand Gopalan

For Respondents : Mr. K.M.Ramesh,
Senior Advocate
for Mr. M.Ravi (for R1)
Labour Court (for R2)



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COMMON JUDGMENT

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C.KUMARAPPAN, J.

Both the Writ Appeals were filed by the State Bank of India, (hereinafter called "the Bank") against their workman, R. Nagarajan (hereinafter called "the workman"), assailing the common order dated 13.09.2021 passed in W.P. Nos. 9575 and 19718 of 2010.

2. The brief facts which give rise to the instant Writ Appeals are that, the workman joined in the Bank as a Clerk on 07.05.1981. While he was in service, a charge memorandum dated 11.08.1998 was served on him, for the charge of causing serious financial loss and for fabrication of records. After receiving the charge memorandum, he submitted explanation dated 06.11.1998. Not satisfied with the explanation, the Bank proceeded with domestic enquiry. Eventually, the Enquiry Officer submitted report, holding that the charges are proved. As a concomitant, the Bank imposed the punishment of dismissal vide order dated 19.10.2001. Against the above final order, the workman preferred an appeal before the appellate authority, however, the appellate authority also confirmed the punishment of dismissal



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from service, vide order dated 01.12.2001.

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3. Subsequent to the order of dismissal, the workman raised an Industrial Dispute in I.D. No. 122 of 2003, before the Central Government Industrial Tribunal-cum-Labour Court. The Tribunal in its award dated 25.01.2010 modified the punishment, from Dismissal to Compulsory retirement. Assailing the above order, both the Bank, and the workman preferred Writ Petitions in W.P. Nos. 9575 and 19718 of 2010 respectively. Wherein, the learned Single Judge reversed the order of the Tribunal, and ordered for reinstatement of the workman, as a concomitant, the Bank's Writ Petition challenging the modification of punishment was dismissed. Aggrieved by these orders, the Bank preferred the instant Writ Appeals.

4. We have heard Mr. Anand Gopalan, the learned counsel for the Bank, and Mr. K.M.Ramesh, the learned Senior Advocate for Mr.V.Ravi, appearing on behalf of the workman.

5. Mr. Anand Gopalan, learned counsel for the Bank, would vehemently contend that, the finding of the learned Single Judge that the



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order of the Tribunal is without evidence is, inasmuch as contrary to the order of this Court in W.P. Nos. 3785 and 5116 of 2005, in the previous round of litigation, wherein, the learned Single Judge, vide order dated 12.11.2009, had permitted the Bank to let in additional evidence. In the effect, he would contend that the evidence which they had already let in before the domestic enquiry is still to be construed as evidence submitted before the Tribunal. He would also invite our attention about the opportunity provided by the Tribunal to let in additional evidence. The same, according to the learned counsel, demonstrate the entitlement of the Bank to use the evidence, before the Tribunal.

6. It is his further submission that, when the Labour Court found that there is evidence, to arrive at a conclusion, the Writ Court, under judicial review, ought not to have taken a different view. The learned counsel would also contend that, if in any case, this Court is not agreeable with the Bank's contention, he seeks for an order of remand, with an opportunity to let in fresh evidence before the Tribunal. It is in this background, he would pray to allow the Writ Appeals.



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7. Per contra, Mr. K.M. Ramesh, the learned Senior Advocate appearing on behalf of the workman, would contend that the order of the learned Single Judge in W.P. Nos. 3785 and 5116 of 2005 is per incuriam, inasmuch as, the same contravenes the judgment of the Hon'ble Supreme Court of India in *Neeta Kapilesh vs. Presiding Officer, Labour Court*, reported in *(1999) 1 SCC 517*. He would further contend that the learned Single Judge in the impugned order has relied upon the *Neeta Kapiles's case* (cited supra) and had arrived at a conclusion that the order of the Tribunal is without any evidence, therefore, the finding of the learned Single Judge is in accordance with law.

8. It is also his contention that, since the Tribunal found that the domestic enquiry was not conducted in a fair and proper manner, the evidence adduced before the domestic enquiry and its findings got eschewed, in effect, it is for the Management to prove the charges afresh independently before the Labour Court. Hence, he prays to dismiss the present Writ Appeals.

9. We have given our anxious consideration to the submissions made on either side.



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10. The short point to be decided in the instant Writ Appeals is that:

Whether the evidence let in before the domestic enquiry proceedings could be used by the Bank, before the Tribunal, that too when the domestic enquiry was held to be not fair and proper. In this regard, it is appropriate to extract the relevant portion of the order passed in previous round of litigation in

W.P. Nos. 3785 and 5116 of 2005. The same is extracted hereunder:-

*“11. Considering the pendency of the writ petitions before this Court for nearly five years, it is but necessary that the workman be directed to list out the documents and names of witnesses that he seeks to examine an witness. Hence, he is hereby directed to specify the same by way of filing a memo before the Tribunal within a period of four weeks from today. On such filing of a memo, the Tribunal shall grant opportunity to the second respondent to adduce evidence which has to be concluded within a period of four weeks thereafter. Thereafter, the Tribunal has to pass final order. Considering the enquiry report, opportunity be granted to the second respondent to let in evidence, **which is only by way of additional evidence to be let in.**”*

(Emphasis supplied)

11. In the light of the above order, the learned counsel appearing for the Bank would rely upon the words "additional evidence" and would contend that their evidence available before the domestic enquiry proceeding could be used before the Labour Court. The wholesome reading of the order



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of the Labour Court dated 22.12.2004, would manifest two aspects, firstly, unfair domestic enquiry. Secondly, provision of opportunity to the Bank to let in additional evidence.

12. However, the learned Senior Counsel, Mr. K.M.Ramesh, would rely upon the Constitution Bench decision of the Hon'ble Supreme Court of India in ***Karnataka State Road Transport Corporation vs. Lakshmiddevamma***, reported in (2001) 5 SCC 433, and would contend that the course adopted by the Tribunal is contrary to the ratio of the above reported case. The case of ***Shankar Chakravarti vs. Britannia Biscuit Co. Ltd.***, reported in (1979) 3 SCC 371 was followed in the above reported case.

13. According to the ***Shankar Chakravarti case (cited supra)***, unless the Management seeks specific request before the Labour Court, to let in evidence, they would lose their opportunity for the same. In such view of the matter, we should see whether the word “additional evidence” employed in the earlier Writ Petitions in W.P. Nos. 3785 and 5116 of 2005, would enure any benefit to the Bank to use the evidence already let in before the Enquiry Officer.



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14. In this regard, the learned Senior Advocate, Mr. K.M.Ramesh, would invite the attention of this Court to the above ***Neeta Kapilesh's case*** (cited supra), wherein the Hon'ble Supreme Court of India, has held that, after the Labour Court's finding about the unfairness of the domestic enquiry, the Management is bound to lead fresh evidence, otherwise the Management has to suffer the consequences.

15. For ready reference, it is relevant to extract the judgement of the Hon'ble Supreme Court of India in the case of ***Neeta Kapilesh vs. Presiding Officer, Labour Court*** reported in ***(1999) 1 SCC 517***, which reads as follows:-

“26. Learned counsel for the appellant (sic respondent) contended that in spite of the direction by the Labour Court to the respondent-Management to lead evidence, it was open to the Management to rely upon the domestic enquiry proceedings already held by the Enquiry Officer, including the evidence recorded by him, and it was under no obligation to lead further evidence, particularly as the Management was of the view that the charges, on the basis of the evidence already led before the Enquiry Officer, stood proved. It was also contended that under Section 11-A, the Labour Court had to rely on the “materials on record” and since the enquiry proceedings constituted “material on record”, the same could not be ignored. The argument is fallacious.



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27. *The record pertaining to the domestic enquiry would not constitute “fresh evidence” as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute “material on record”, as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and were in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that a full opportunity of hearing was given to her in consonance with the principles of natural justice. **This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be “material on record” within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences.***

(Emphasis supplied)

16. From the reading of the above judgment, it would be explicit that, the record of the domestic enquiry would cease to be “material on record”, after the domestic enquiry is held to be bad. Even for argument's sake, if there is a direction by the learned Single Judge to rely upon the evidence available before the Enquiry Officer, though it is binding inter parties, this Court is



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bound to go into the legality of the award of the Tribunal dated 25.01.2010, as a whole.

17. No doubt, when there was a direction by the High Court, to rely on those evidences, the Tribunal has no other option. However, as rightly contended by the learned Senior Counsel, such a course is contrary to the ratio of the Hon'ble Supreme Court of India laid down in *Neeta Kapilesh's case* (cited supra). If we apply the ratio of *Neeta Kapilesh's case* (cited supra) to the facts of the present case, as rightly held by the learned Single Judge, the award of the Tribunal is indeed based on no evidence as there was no fresh evidence adduced before the Tribunal. In the light of the above detailed discussion, we do not find any grounds to interfere with the order of the learned Single Judge.

18. Nextly, while considering the second limb of the argument of the Bank, for remand, at this length of time, we do not propose to remit back the matter, as the petitioner was charged in the year 1998 and has been undergoing the ordeal of the disciplinary proceedings for more than two decades. The learned Senior Counsel appearing on behalf of the workman



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would submit that the workman, has already been superannuated and he is now aged about 67 years. At this juncture, it is useful to refer the judgement of the Hon'ble Supreme Court of India in the case of **Hardwari Lal vs. State of U.P. and Others** reported in (1999) 8 SCC 582. The relevant paragraph is 5, and the same is extracted below:-

*“5 In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service. **Considering the fact of a long lapse of time before the date of dismissal and reinstatement, and no blame can be put only on the door of the respondents, we think it appropriate to award 50 per cent of the back wages being payable to the appellant. We thus allow the appeal filed by the appellant. However, there shall be no order as to costs.**”*

(Emphasis supplied)

19. In such view of the matter, considering the long lapse of time from the date of dismissal, and subsequent superannuation of the workman, by relying the **Hardwari Lal case** [cited supra], we deem it appropriate to award 50% of the back wages along with continuity of service.



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20. In the result, these Writ Appeals are partly allowed as indicated above and the Bank is directed to extend all the monetary benefits due to the workman if not already given, after adjusting the amount already paid if any, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

[R.S.M., J.] [C.K., J.]
27.11.2024

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Index : Yes
Speaking order
Neutral Citation : Yes

To
The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
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Chennai – 600 034.



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R.SUBRAMANIAN, J.
and
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Pre-Delivery Common Judgement in
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