IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.3989 of 2006

A.Baskaran .. Petitioner

Versus

1. DBS Bank India Ltd.,
   rep. by Deputy General Manager,
   Salem Road, Kathaparai,
   Karur - 639 006.

2. The General Manager/Appellate Authority,
   DBS Bank India Ltd.,
   Salem Road, Kathaparai,
   Karur - 639 006.

3. The Chairman & Board of Directors,
   DBS Bank India Ltd.,
   Salem Road, Kathaparai,
   Karur - 639 006.

4. The Special Deputy Commissioner of Labour,
   (Appellate Authority under Tamil Nadu Shops &
   Establishment Act, 1947), Chennai - 6. .. Respondents

(Substituted vide order, dated 30.06.2021 made
in W.P.No.3989 of 2006)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus after calling for records relating to the order, dated 08.08.2005 in TSE 1/17/02 (TSE 19/99) passed by the 4th respondent and quash the same as being illegal, arbitrary, perverse and biased and consequently direct the respondents 1 to 3 to reinstate the petitioner in service with backwages, continuity of service and other attendant benefits.

For Petitioner : Mr.S.Sathish Kumar

For Respondents : Mr.G.Anandakrishnan,
for RR-1 to 3

: Mr.K.Surendran,
Additional Government Pleader,
for R4

ORDER

This Writ Petition is filed challenging the award passed by the appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 made in TSE 1/17/02, dated 08.08.2005. By the said award, the claim made by the petitioner herein was rejected.

2. The brief facts leading to the filing of the Writ Petition are that the petitioner, *A.Baskaran*, was a Manager under the then Laxmi Vilas Bank Limited in the Purasawalkam branch during the year 1995-1997. While so,

the petitioner was issued with a charge memorandum on 10.04.1997 and it is essential to extract the charges which read as follows:-

"It is reported against you as under:

That while you were functioning as manager of our Purasawalkam branch during the period between 24.04.95 and suspended on 14.03.97. That while functioning so, M/S Yeses International and Kavitha Enterprises wee sanctioned various credit facilities. That accordingly M/S Kavitha Enterprises was sanctioned KCC limits of Rs.60 lakhs vide sanction order dated 06.06.95 and subsequently an enhanced limit of Rs.300 lakhs was sanctioned vide sanction order dated 24.08.96. That whereas M/S Yeses International was sanctioned KCC of Rs.180 lakhs vide sanction order dated 24.02.96 and a combined limit of ILC and KCC of Rs.300 lakhs and R.450 lakhs respectively vide sanction order dated 24.08.96. That as per the terms of sanction, the KCC limits were sanctioned against the pledge of superior kerosene oil to be purchased from IOC. That accordingly, the goods should be released by IOC only against the delivery orders to be received by the branch. That as per the norms in force, the borrowers could be allowed to operate the account within the drawing power limit.

That while so, even without obtaining requisition from the borrower, you issued delivery orders. That you also failed to maintain the copies of the indent issued. That though the indents were serially numbered, you failed to note the numbers in the registers. That the invoice numbers on the basis of which the stock receipts were entered was also not noted in the register. That with a sole intention of accommodating the borrowers, you also allowed the borrowers to draw kerosene in excess over and above the permissible limit as per the DP register. That to be specific, in respect of M/S Kavitha Enterprises, you allowed the party to draw excess kerosene over and above the drawing power as under:

Month	**Quantity of kerosene drawn in excess (KL)**
June '95	168
August '95	576
September '95	232
December '95	64
January '96	736
February '96	92
August '96	838
September '96	1272
November '96	352
	4330

That therefore, you allowed the party to draw 4330 KL of kerosene from IOC in excess of that recorded in DP Register.

That similarly, in respect of M/S Yeses International, you allowed the party to draw 7768 KL of kerosene in excess from that of the DP register during the period between August '95 and February '97.

That further, you were also in the habit of issuing delivery orders without any reference to drawing power. That to site specific instances, the delivery orders presented at IOC were in excess of the delivery orders issued by you as per records as shown hereunder:

Period	**Quantity (in KL)**		
--------	---------------------		
July '95		130	
October '95		220	
November '95	224		
March '96			76
June '96		408	
July '96		1896	
August '96		672	
September '96	2172		
April - May '96		1316	

	7114		
Less: Delivery orders issued by you but not presented at IOC	1340		

Net excess delivery orders presented		5774	

That thus it would be patently evident that acting in collusion with the party and in order to cause undue accommodation to the party, you allowed the party to draw the stock in excess in flagrant violation of the terms of sanction as well as of norms laid by the bank in this regard and thereby exposed the bank to a huge financial loss/risk.

<u>CHARGE NO.1:</u>

By doing as above, you have failed to discharge your duties with devotion, diligence, honesty and integrity. You have therefore acted in violation of Regulation 5(i) of The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations, 1987.

CHARGE NO.2:

By causing undue accommodation to the party and exposing the bank to huge financial loss/risk, you have acted in a manner prejudicial to the interests of the bank and thereby committed a gross misconduct under Regulation 17(d) of The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations, 1987.

That as regards documentation in respect of M/S Kavitha Enterprises, letters of guarantee as per Circular No.34/85 were not obtained from M/s Sherfuddin, Sherin and M.K.Rajagolpal. That you failed to obtain ratifications from A.O for L/Gs No.52/95-96, 54/95-96, 62/95-96, 1/96-97, 4/96-97, 12/96-97, 14/96-97, 16/96-97, 18/96-97, 19/96-97 and 22/96-97. That you also failed to obtain Counter Guarantee for LG.22/96-97 for Rs.83,777/-

That as per the advise of the advocate, a declaration ought to have been obtained from M/S S.Gowri, K.R.Habeeba Bevi, S.Shanmugham and S.Kaneez Fathima in respect of the properties lodged with the bank as collateral security to the effect that properties had been acquired with their own money. That despite this you failed to obtain any such declaration and thereby failed to safeguard the interest of the bank.

CHARGE NO.3:

By doing as above, you have failed to conform to the rules governing your service and also comply with the orders of your superiors. You have therefore committed a gross misconduct by acting in violation of Regulation 5(ii) of the The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations, 1987.

CHARGE NO.4:

That you also allowed the party to divert the funds from the account of M/S Kavitha Enterprises as shown hereunder:

Date	**Name of the Account**	**Amount (Rs. in lacs)**
28.09.96	Yeses International	30.00
18.10.96	Yeses International	35.00
28.10.96	Kalyan Petro Products (P) Ltd.	25.00
02.11.96	Kalyan Petro Products (P) Ltd.	40.00

04.11.96	Karthik Petroleum (P) Ltd.	6.00
05.11.96	Karthik Petroleum (P) Ltd.	10.00
13.12.96	Yeses Promoters (P) Ltd.	3.00

While the transfers pertaining to dates viz., 02.11.96, 04.11.96 and 05.1196 were effected for purchase of Pay Orders in favour of these companies, the other transfers were effected without cheques. That thus you abeted the party to divert the funds for other purpose and thereby jeopardised the interest of the bank.

CHARGE NO.5:

By doing as above, you have acted in a manner detrimental to the interest of the bank and thereby committed gross misconduct under Regulation 17(d) of The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations, 1987.

That similarly, in respect of COD, you allowed the party to take drafts in favor of IOC by debiting the COD Account for purchase of stock for M/S Yeses International as indicated hereunder:

Date	D.D. No.	Amount (Rs. in lacs)
03.09.96	108370	95.00
11.09.96	108383	96.00
08.10.96	004323	106.00
08.10.96	004324	106.00

CHARGE NO.6:

By acting as above, you have again acted in collusion with the party to divert the funds and thereby committed a gross misconduct under Regulation 17(d) of The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Regulations, 1987.

That similarly, in respect of M/S Yeses International also you have abeted the party to divert the funds for other purpose as indicated hereunder:

Date	Account	Amount (Rs. in lacs)
21.12.95	S.Shanmugham	27.00
20.02.96	Yeses Finance & Investments	4.00
15.05.96	Yeses Promoters (P) Ltd.	11.00

10.08.96	Yeses Promoters (P) Ltd.	2.20
09.09.96	Yeses Promoters (P) Ltd.	32.00
21.09.96	Kavitha Enterprises COD	151.00
08.10.96	Kavitha Enterprises COD	103.00
30.10.96	S.Kalyankumar	15.00
13.12.96	Yeses Promoters (P) Ltd.	4.00
17.01.97	Yeses Promoters (P) Ltd.	10.33

CHARGE NO.7:

By acting as above, you have acted in a manner detrimental to the interest of the bank and thereby committed gross misconduct under Regulation 17(d) of The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations, 1987.

That you allowed the party to utilise the KCC account of M/S Yeses International to close the COD account of M/S Karthik Enterprises to the tune of Rs.254 lakhs.

CHARGE NO.8:

By doing as above, you have failed to discharge your duties with devotion, diligence, honesty and integrity and thereby committed a gross misconduct by acting in violation of Regulation 5(i) of The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations, 1987.

With regard to documentation, you failed to obtain ratification from A.O in respect of M/S Yeses International for LGs No.53/95-96, 61/95-96, 2/96-97, 5/96-97, 7/96-97, 13A/96-97, 15/96-97, 17/96-97, 20/96-97, 21/96-97, 23/96-97 and 13/96-97.

That you also failed to obtain personal guarantee from Sri M.K.Rajagopal. That whereas in respect of personal guarantee obtained from M/S Sherfuddin and Sherin, the signatures were inter changed.

That you have credited a sum of Rs.3 lakhs on 11.01.97 to the account of M/S Yeses Promoters (P) Ltd by debiting the Current Account No.1228 of M/S Husna Enterprises without any cheque or authority letter. That in respect of LG No.50/95-96 for Rs.36,432/- issued in respect of M/S Husna Enterprises, you failed to obtain ratification from A.O. That similarly, you also failed to obtain ratification from A.O in respect of LG No.8/95-96 and LG No.51/95-96 issued in respect of M/S Fluka Petroleum.

CHARGE NO.9:

> By doing as above, you have failed to comply with the instructions of your superiors and thereby committed a gross misconduct by acting in violation to Regulation 5(ii) of The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations, 1987.
>
> You are therefore advised to submit your written statement of defense within 15 days of receipt of this Chargesheet."

3. The petitioner submitted an explanation denying the charges. Thereafter, a Domestic Enquiry was held and by a report, dated 27.02.1998, the Domestic Enquiry Officer found that the charges were partly proved in the sense that the integrity and honesty of the officer cannot be questioned, but, there was negligence. Therefore, the Domestic Enquiry Officer returned the finding that in respect of the charges, the allegations *per se* concerning negligence in not properly verifying the stock, in not enforcing the regulation relating to utilising the fund for the same purposes and the action of issuing the permission without obtaining the delivery orders, are all proved. Thereafter, a second show-cause notice was issued and not accepting the explanation submitted by the petitioner, by an order, dated 12.05.1998, the petitioner was dismissed from the service.

4. As against the order of dismissal from the service, the petitioner initially approached the departmental authorities by way of an appeal and review and not being successful, approached the appellate authority under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947. It is pertinent to mention here that the appeal was filed in the year 1999. At that point in time, the provision under Section 41 of the Act, as it stood, only empowers the authority to conclude whether there was any reasonable cause for the non-employment or not. In that context, even before the appellate authority, both sides let in evidence and thereafter, the matter was taken up and the impugned award was passed on 08.08.2005, thereby, holding that there was a reasonable cause for non-employment and rejecting the claim of the workman. Aggrieved by which, the present Writ Petition is filed.

5. Heard *Mr.S.Sathish Kumar*, learned Counsel for the petitioner; *Mr.G.Anandakrishnan*, learned Counsel for the respondent Nos.1 to 3 and *Mr.K.Surendran*, learned Additional Government Pleader for the fourth respondent.

6. *Mr.S.Sathish Kumar*, the learned Counsel for the petitioner, taking this Court through the list of dates and events and the evidence on record in the Domestic Enquiry, would first bring the attention of this Court to the findings of the Enquiry Officer concerning each and every charge where the Domestic Enquiry Officer categorically found that the petitioner's integrity and honesty is unquestionable. It is unequivocally found that the petitioner was not in collusion with the said two entities, and it is the said Companies that cleverly produced fake documents and forged letters to get undue benefits. The finding of the Enquiry Officer is that the petitioner is not shrewd enough to deduct the fraud played by the said Companies.

7. As a matter of fact, the charges levelled against the petitioner are only under Sections 5(i) and 17(d) of the Lakshmi Vilas Bank Officers Discipline and Disciplinary Action Regulations, 1987. The learned Counsel, by placing reliance on the said regulations, would submit that Regulation 5(i) relates to integrity, honesty, devotion and diligence and taking all possible steps to protect the interest of the bank. The Regulation 17(d) relates to gross misconduct. The Regulation 17(f) relates to negligence. It is relevant to extract the regulations which read thus:-

Regulation 5(i):	Every officer shall serve truly and faithfully and discharge his duties with utmost integrity, honesty, devotion and diligence and take all possible steps to protect the interests of the Bank and do nothing which is unbecoming of a bank officer.
Regulation 5(ii):	Every officer shall conform to and abide by the rules governing his service in the Bank and comply with and obey all orders and direction of his superiors.
Regulation 17(d):	Gross Misconduct - Doing an act prejudicial to the interest of the Bank.
Regulation 17(f):	Negligence involving or likely to involve the Bank in serious loss, monetary or otherwise.
Regulation 19(c):	Minor Misconduct - Breach of any rule of business or instructions of a superior.

Therefore, he would submit that the original charge, levelled under Regulation 5(i), is not proved.

8. The charge under Section 17(d) is only doing an act prejudicial to the interest of the bank, which is normally treated as a minor misconduct, for which, the capital punishment of dismissal from service, is not justifiable. He would submit that it is one thing to charge the employee with a serious charge and to convict him for a lesser charge. But, if the charge is different, falling under a completely different category, unless the same is specifically framed and the workman is allowed to give an explanation with reference thereof, the punishment could not have been imposed. The

Domestic Enquiry Authority as well as the appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 completely omitted to consider this aspect of the matter.

9. In support of his submission, the learned Counsel would also rely upon the judgment of this Court in ***M. Ramachandran Vs. Board of Directors, Cheran Transport Corporation, Ltd., Coimbatore and Anr.***[1], more specifically, relying upon paragraph No.14 of the said judgment. Further, the learned Counsel would submit that even concerning the finding regarding negligence, there was no rule as to physical verification. Had the physical verification been there, the petitioner would have been in a position to verify the stock and would have unearthed the fraud played by the said Companies. When the management was unable to place any such rule requiring the petitioner to physically check the stock, then, the finding relating to negligence is also perverse. The learned Counsel, in this regard, would rely upon the judgment of this Court in ***G.V.Aswathanarayana Vs. Central Bank of India (by Chairman), Bombay and*** Ors.[2], whereunder,

1 2001 (1) L.L.N.979
2 2004 (1) L.L.N.1081

under similar circumstances, it was held that unless what is expected by the petitioner is conveyed, the finding of guilt is not sustainable.

10. The learned Counsel would further rely upon the judgment of the Hon'ble Supreme Court of India in ***M.V.Bijlani Vs. Union of India and Ors.***[3], for the same proposition that unless a specific charge is framed, the finding of guilt in respect of new and altered allegations is unsustainable. For the same proposition, the learned Counsel would also rely upon the judgment in ***Dayanand Shankarrao Lokhande and Ors. Vs. Union of India and Ors.***[4]. The learned Counsel would also further submit that the appellate authority based its finding only on the isolated answers which it erroneously read from the cross-examination of the petitioner/workman, ought to have read the entire evidence in toto. If the entire evidence given by the petitioner is read as a whole, it would be clear that firstly, there was no rule or mandate which was requiring the physical verification of the stock before issuing permission to the said Companies and secondly, there was no negligence at all regarding the alleged charges.

3 (2006) 5 SCC 88
4 2002 (3) L.L.N.979

11. In any event, the learned Counsel would submit that for the mere negligence, especially, when the Enquiry Officer vouches for the integrity and honesty of the petitioner, the petitioner alone cannot be made as a scapegoat and a capital punishment of dismissal from the service cannot be imposed on him. Even assuming that the appellate authority, at that relevant point in time, did not have that power similar to Section 11A of the Industrial Disputes Act, 1947, at least, now, this Court, in exercise of the power under Article 226 of the Constitution of India, should interfere in the matter as the punishment is grossly disproportionate to the findings of delinquency.

12. Per *contra*, *Mr.G.Anandakrishnan*, learned Counsel for the respondent/management would submit that it is not as if the petitioner could not verify the stock and it can be known only by the physical verification. The physical existence of the stock is totally a different matter. But, when the amount of loan advance was for 'x' amount, even without referring to the same, when bogus stock vouchers are produced evidencing more than the said amount, then, *ex facie*, it should have been clear to the petitioner that there is something wrong with the stock statement which is given by the

said Company. Therefore, this is a case of willful negligence in the first instance.

13. Secondly, he would submit that the charge is also on the allegation that the loan amount which is sanctioned for the purchase of Kerosene, has been diverted to and siphoned off for the other purposes. There is absolutely no explanation whatsoever in the petitioner permitting the said transactions, especially, when the transactions have taken place from the same loan account of the said Companies. Thirdly, he would submit that even with reference to the issue of permission, even without obtaining of delivery note, the petitioner granted permission. The negligence resulted in a huge loss. Even assuming that there was no doubt as to the integrity and honesty of the petitioner, still the misconduct is that of gross negligence and when the petitioner is a Bank Officer dealing with the funds of the customers the charge is serious. By relying upon the judgments in ***State Bank of India and Anr. Vs. Bela Bagchi and Ors.***[5]; ***State Bank of India and Ors. Vs. Ramesh Dinkar* Punde.**[6], he would submit that the charge would warrant a severe punishment. Under the Tamil

5 (2005) 7 SCC 435
6 (2006) 7 SCC 212

Nadu Shops and Establishments Act, 1947 as it was then prevalent, the only question to be considered by the appellate authority was whether there was any reasonable cause for the imposition of the punishment and the authority, having found that there was a reasonable cause because of the proven negligence, there is nothing for this Court to interfere with the matter. He would submit that there is no perversity in the order of the appellate authority for this Court to interfere with the matter.

14. I have considered the rival submissions made on either side and perused the material records of the case.

15. The disciplinary enquiries are *quasi*-criminal in nature and the alleged delinquency has to be specifically framed as a charge and put to the workman, without which the finding of guilt cannot be returned. Therefore, in this case, the first question to be decided is whether or not the charge of negligence on the part of the workman was put to him.

16. The entire charges are extracted above. It is clearly stated in the charges itself that even without obtaining requisition from the borrower, the

Manager issued delivery orders. Similarly, he also failed to maintain the copies of the indent issued. It is also put to him that he allowed the party to draw excess Kerosene over and above the drawing power. Therefore, even agreeing with the petitioner/workman that with a sole intention of accommodating the borrowers or collusion with the borrowers or patently permitting them with a dishonest intention is totally not proved, still, the charge of negligence is also alleged against him. It is very clearly mentioned in the statement of imputations that he was also in the habit of issuing delivery orders without referring to their drawing power. It is also clearly charged that he permitted the amount to be diverted from the account for the purposes of other than for which the loan was sanctioned. The first charge is extracted again as hereunder:-

> "**CHARGE NO.1:**
>
> By doing as above, you have failed to discharge your duties with devotion, diligence, honesty and integrity. You have therefore acted in violation of Regulation 5(i) of The Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations, 1987."

Therefore, when all these facts are clearly mentioned in the charges and in the first charge, it is mentioned that the Manager failed to discharge his duties with devotion, diligence, honesty and integrity. Diligent would mean not being negligent. Therefore, when, in essence, the charges are put to him, the mere non-quoting of the relevant provision under the regulation alone, would not come to the rescue of the petitioner. Therefore, in that regard, I am of the view that the primary contention of the petitioner that he was found guilty without being specifically charged is unsustainable.

17. Once the same is unsustainable, the other arguments are only on the details, nitty-gritty and adequacy of evidence, which this Court, under Article 226 of the Constitution of India, will not go into great detail. *Prima facie*, when the Domestic Enquiry Authority, the Disciplinary Authority, or the Appellate Authority finds that there is material regarding the negligence on the part of the petitioner and holds that the said negligence is enough to impose the punishment unless the punishment shocks the conscience of this Court, this Court will not interfere in the exercise of the jurisdiction under Article 226 of the Constitution of India. It is to be noted that this is not a case that happened after the amendment to Section 41 of the Tamil Nadu Shops and Establishments Act, 1947, where the Appellate Authority is required even to reappraise the evidence for every charge akin to Section 11A of the Industrial Disputes Act, 1947.

18. In view thereof, considering the overall facts and circumstances of the case, I am also unable to accept the contention of the learned Counsel for the petitioner that the punishment is unduly harsh and disproportionate.

19. Accordingly, finding no merits, this Writ Petition stands dismissed. There shall be no order as to costs.

21.11.2024

Neutral Citation : yes
grs

To

The Special Deputy Commissioner of Labour,
(Appellate Authority under Tamil Nadu Shops &
Establishment Act, 1947), Chennai - 6.

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.3989 of 2006

21.11.2024