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W.P.No.43735 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.43735 of 2006

Bank of Baroda
Rep.by its Regional Manger
Chennai, Regional Office – Chennai Metro I
10, C.P. Ramasamy Road,
2nd Floor, Alwarpet,
Chennai 600 180.

(Cause title amended as per order of this Court dated 18.1.2023
in W.M.P.No.27992 of 2023 in W.P.No.43735 of 2006)

.. **Petitioner**

Vs.

1.The Deputy General Secretary
Vijaya Bank Workers' Organisation
No.60/2, Big Street
Triplicane
Chennai - 600 002.

2.The Central Government Industrial Tribunal
cum Labour Court
Government of India
Ministry of Labour & Employment



W.P.No.43735 of 2006

I Floor, 'B' Wing, No.26, Haddows Road
Shastri Bhavan, Chennai – 600 006.

.. **Respondents**

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records of the 2nd respondent in its Award dated 21.02.2006 passed in I.D.No.41 of 2005 and received by the petitioner under cover of the 2nd respondent's letter dated 15.06.2006 and quash the same and pass such further or other orders.

For the Petitioner	: Mr.P.R.Raman for Mr.C.Seethapathy
For the Respondents	: Mr.K.Ramesh, Sr.Counsel for Ms.N.Parameshwari for R1 for R2 - Tribunal

ORDER

This Writ Petition is filed challenging the award of the Central Government Industrial Tribunal cum Labour Court dated 21.02.2006 in I.D.No.41 of 2005, in and by which, the claim of the 1st respondent – workman was allowed and the punishment of two increments cut was set aside.

The brief facts leading to filing of the present Writ Petition are that:

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2. The 1st respondent - workman was working as a Clerk in Tondiarpet Branch of the petitioner – Bank. While so, on 23.04.2003, there seems to have to be an altercation between the 1st respondent - workman and the Branch Manager of the petitioner - Bank. When the Branch Manager requested the workman to sign the movement register, he is said to have spoken disrespectful words and therefore, a charge memorandum was issued on 30.05.2003 and it is essential to extract the exact words spoken and the charges levelled against the respondent – workman as under :-

“‘NEE PARTIALITY KANBIKKIRAI. ELLORAIYUM MOVEMENT REGISTERIL KAIYEZHUTHU PODA SOL' (You are showing partiality. Ask everyone to sign in the movement register).

The Branch Manager informed you that you had only come late to the Branch on that day and hence, you had to sign the movement register. In reply to the same, you again shouted at the Branch Manager as under:

'ENAKKU ASSURANCE KODU, ELLORAIYUM MOVEMENT REGISTERIL KAIYEZHUTHU PODA SOLVEN ENRU' (Give assurance to me, you will ask all others also to sign in the movement register).

When the Branch Manager insisted you to sign in the Movement Register, again you shouted at him as under in loud voice:

'NANUM ORU VIJAYA BANK STAFF, NEEYUM ORU VIJAYA BANK STAFF. ENAKKU ENNA RIGHTS UNDO ADHE RIGHSTHAN UNAKKUM. UNAKKU ONRUM EXTRA RIGHTS ADHIKARAM KIDAIYADHU. SENSELESS MANAGER. UNNIDAMELLAM MANUSHAN PESUVANAA ?



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(I am also a Vijaya Bank Staff. You are also a Vijaya Bank staff. Whatever rights I have, you are also having the same rights. You do not have any extra rights / authority. Senseless Manager. Whether any man will talk to you ?).

The above incident took place at around 10.10 am at the branch on 23.04.2003 and you have shouted at the Branch Manager as above in the presence of the other staff members as well as customers who had come to transact business at the branch. Ultimately, you signed the movement register by marking the time of your attending the branch as 10.05 am instead of 10.10 am. When the Branch Manager corrected the same, you had cut it and wrote again as 10.05 am, which was later corrected by the Branch Manager.

The Bank therefore, charges you as under:

1. Your action of refusing to sign the movement register for having come late to the branch on 23.04.2003 inspite of repeated instructions from the Branch Manager; signing the movement register belatedly and also making unauthorised changes therein with regard to the time of your arrival at the branch as 10.05 am instead of 10.10 am amounts to wilful insubordination and disobedience of the lawful and reasonable orders of your superior which constitutes gross misconduct under Sub-clause (e) of Clause 5 of Memorandum of Disciplinary Action Procedure for Workmen dt. 10.04.2002.

2. Your action of misbehaving and use of abusive language against the Branch Manager on 23.04.2003 amounts to disorderly and unruly behaviour which constitutes gross misconduct under sub-clause (c) of Clause 5 of Memorandum of Settlement on Disciplinary Action Procedure for Workmen dt. 10.04.2002.

3. Your action of shouting in the Banking hall of Tondiarpet branch on 23.04.2003 in full view of the customers and the staff of the branch amounts to an act prejudicial to the interest of the Bank which constitutes gross misconduct under sub-clause (j) of Clause 5 of Memorandum of Settlement on Disciplinary action Procedure for Workmen dt. 10.04.2002.”



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3. The 1st respondent – workman denied the charges and after conducting domestic enquiry, the above stated punishment was imposed. The Labour Court found that while the memorandum of settlement on disciplinary matters of the petitioner – Bank contains a provision to give third opportunity with reference to the proposed punishment, in this case, the punishment was straightaway proposed after the enquiry, without hearing the workman and by considering the show cause notice, the Labour Court found that there is violation of principles of natural justice and accordingly held that the procedure followed in the domestic enquiry was not fair and proper. On such finding, the Labour Court set aside the punishment by the impugned award dated 21.06.2006.

4. The primary contention on which the Writ Petition filed is that even in the counter statement filed before the Labour court, it has been categorically pleaded by the petitioner – Bank that if the Labour Court finds that the procedure followed in the domestic enquiry is not fair and proper, the management be given an opportunity to prove the charges on merit before the Labour Court. Therefore, the Labour Court having found that there is violation of principles of natural justice, ought to have passed only a preliminary award and ought to have given



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an opportunity to the petitioner – Bank to let in evidence on merits, instead it has chosen to permanently set aside the punishment and restored the increments, without any opportunity to the petitioner – Bank.

5. Per contra, the learned Senior Counsel appearing on behalf of the 1st respondent – workman would submit that the punishment is stoppage of two increments, which was imposed in the year 2003 and thereafter, the matter was referred to the Labour Court and the award was passed in the year 2006 and the 1st respondent – workman retired from service, immediately after filing of this Writ Petition. Therefore, he would submit that remanding this matter back to the Labour Court at this stage, after a period of 18 years considering the 1st respondent – workman's advanced age would be unfair.

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

7. The charge as such is extracted above. It can be seen from the nature of abuse itself, that though the 1st respondent – workman was challenging the



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Manager, it can be seen that the language cannot be said to be foul or unparliamentary. It should be seen from the context, where the 1st respondent – workman initially joined as a sub-staff and thereafter promoted as a Clerk. The punishment imposed is only stoppage of two increments. The 1st respondent – workman was aged 58 years, at the time of filing the Writ Petition itself and now, he is aged about 76 years.

8. Therefore, in view of the huge efflux of time and considering the nature of punishment, nature of charge and the fact that the 1st respondent – workman had superannuated from service, after receiving all the subsequent increments, pursuant to the order of the Labour Court, at this stage, though I am in agreement with the learned counsel for the petitioner, that the Management should have been given an opportunity to prove the charges on merits, considering the sheer efflux of time and the reasons stated above, this is not a fit case to remand the matter, at this stage.

9. For all the above reasons, this Writ Petition is disposed of, upholding the award of the Central Government Industrial Tribunal cum Labour Court dated



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21.02.2006 in I.D.No.41 of 2005. No costs.

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12.11.2024

Neutral Citation : No

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To
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Shastri Bhavan, Chennai – 600 006.



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W.P.No.43735 of 2006

DATED: 07.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Bank of Baroda
Rep.by its Regional Manger
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For the Respondents	: Mr.K.Ramesh, Sr.Counsel for Ms.N.Parameshwari for R1 for R2 - Tribunal

ORDER

This matter is posted under the caption “for being mentioned” at the instance of the learned counsel for the petitioner.

2. When the matter was taken up for hearing, the learned counsel for the petitioner brought to the notice of this Court that there is an error in Paragraph Nos. 5 and 7 with reference to the age of the workman.

3. In paragraph No. 5 instead of the words “retired from service,



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immediately after filing of this writ petition” the following words can be substituted **“will attain the age of superannuation with effect from 30.06.2024”**. Similarly, the last sentence in Paragraph No. 7, “The 1st respondent workman was aged 58 years, at the time of filing of the writ petition itself and now he is aged about 76 years” can be **deleted**.

4. The Registry is directed to issue a fresh order copy by carrying out the said two corrections in Paragraph Nos. 5 and 7.

07.01.2025

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