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W.P.No.12398 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17/10/2023
Delivered on	3/7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.12398 of 2010

a n d

M.P.Nos.1 to 4 of 2010

Canara Bank
rep. By its Deputy General Manager
Regional Office
I Floor
69 Armenian Street
Chennai 600 001. ... Petitioner

(Canara Bank substituted in the place of
Syndicate Bank, vide order dated
2/1/2023 made in W.M.P.No.17626 of 2020
in W.P.No.12398 of 2010 by JNBJ)

Vs

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

2. The General Secretary



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Canara Bank Employees Union
Tamil Nadu State Committee
KK Mundal Building
8 Ramasamy Street
(Off Woods Road)
Chennai 600 002.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records of the first respondent in I.D.No.54 of 2007 and quash its award dated 18/3/2010.

For petitioner

...

Mr.P.Raghunathan
for M/s. T.S.Gopalan & Co

For respondents

...

Tribunal – R.1

Mr.Stalin
for M/s.Row & Reddy
for R.2

ORDER

This writ petition is filed originally by M/s.Syndicate Bank which was later merged into Canara Bank against the General Secretary of the Employees Union for the issuance of a writ of certiorari to quash the Award dated 18/3/2010 in I.D.No.54 of 2007.

2. The facts in brief as per the affidavit are as under:-



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The second respondent Union has raised Industrial Dispute, aggrieved by the dismissal of a workman/Attender by name P.Palani. He was working at Thanjavur branch of the petitioner Bank. In the month of November 1996, City Union Bank of Tiruchirapalli Branch has demanded the petitioner Branch Bank, a sum of Rs.1 lakh alleging that a Demand Draft bearing No.705255 dated 2/11/1996 drawn in favour of City Union Bank of Tiruchirapalli Branch of the petitioner Bank was returned in clearing with an endorsement “forged and stolen draft”. The petitioner Bank has filed a complaint before the Police regarding the said Demand Draft.

3. On 7/11/1996, P.Palani gave a letter to the petitioner Bank admitting that he has stolen the Demand Draft bearing No.705255 during the lunch hours on 10/9/1996 and created and forged a draft and encashed Rs.1 lakh through his friend Srinivasan and Chidambaram on 2/11/1996. He has also agreed to deposit Rs.1 lakh within twenty four hours. He has deposited Rs.43,500/- by way of cash on 11/11/1996 and Rs.56,500/- by way of cash on 13/11/1996 respectively.



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4. A disciplinary action was initiated against the said workman and on its conclusion, he was ultimately dismissed from service on 14/11/1998, after conducting enquiry. During the course of enquiry, it was submitted by the workman that he has refunded the money on persuasion of other employees. The workman has filed a writ petition against the order of dismissal. The said writ petition was dismissed. After 8 years, i.e., in the year 2006, second respondent Corporation has raised an Industrial Dispute. Accordingly, Government of India, as per the Proceeding dated 18/9/1997, referred the dispute to the first respondent Central Government Industrial Tribunal for adjudication of the issue as to whether the action of the Management of the Bank in dismissing the service of Shri.P.Palani, Sub-staff is legal and justified.

5. The said reference was taken on file as I.D.No.54 of 2007 and on consideration of the material placed before the first respondent, an Award was finally passed on 18/3/2010 and held that workman by name Palani has committed misconduct and thereby, confirmed the findings of the Enquiry Officer that charges levelled against him are proved. However, the labour Court has converted the dismissal from service as compulsory retirement with subsistence allowance benefits. Aggrieved by the same,



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present writ petition is filed.

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6. The second respondent Union has filed counter affidavit stating that workman by name Palani had joined the service of the petitioner Bank in the year 1982 at Andaman. On 14/11/1996, he was placed under suspension followed by a charge sheet on 22/12/1997 for which the workman has submitted an explanation in detail on 20/1/1998 and on 29/1/1998, Bank revoked the suspension of workman and he was asked to join the duty.

7. It is further mentioned in the counter affidavit that enquiry was not conducted by following the principles of natural justice as the workman was not given adequate opportunity to defend himself and that the explanation submitted by him was not considered and he was dismissed from service on 24/8/1998. It is mentioned further that workman has preferred an appeal before the Appellate Authority on 15/9/1998, which was dismissed without considering the grounds of appeal mentioned therein.

8. It is mentioned further that Enquiry Officer failed to consider that



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one Rajendran, Clerk has given a letter on 9/11/1996 to the Bank that in case, sub-staff did not pay the amount, he will pay the same and the amount could be deducted from his salary and that if really the said Clerk Rajendran is innocent, there is no necessity to give such a letter and the petitioner Bank has exonerated the Clerk and made the workman as a scapegoat. It is further mentioned that there is no error apparent on the face of the records of the order passed by the first respondent and the workman was without any gainful employment for all these years, thereby sought for dismissal of the writ petition.

9. Heard Mr.P.Raghunathan, learned counsel for the petitioner and Mr.Stalin, learned counsel for the second respondent.

10. It is submitted by the learned counsel for the petitioner that first respondent labour Court has incorrectly exercised the powers vested on it under Section 11 A of the Industrial Disputes Act and that the workman Palani has confessed that he has stolen the Demand Draft and paid a forged draft, encashed Rs.1 lakh from other Bank is a serious misconduct which makes him unfit for an employment in a Nationalised Bank, thereby, does not warrant showing lenience or confession while



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punishing the workman and that for the acts of fraud and misappropriation, dismissal is the appropriate punishment. It is also submitted further that refund of the amount by the workman Palani would not mitigate the gravity of misconduct and does not warrant taking any lenient view while inflicting punishment.

11. It is also further submitted by the learned counsel for the petitioner that the second respondent has raised an Industrial Dispute after 8 years of dismissal, thereby, first respondent has resisted the dispute in I.D.No.54 of 2007 on the ground of delay and laches.

12. Perused the materials available on record.

13. The first respondent labour Court, by way of an impugned order has though confirmed the finding of the Enquiry Officer with regard to the finding of the workman Palani, guilty of the mis conduct has converted the dismissal to that of compulsory retirement. However, aggrieved by the finding of the first respondent, impugned award confirming the finding of the Enquiry Officer that workman Palani has



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committed misconduct, either the workman Palani or the second respondent Management has not preferred any writ petition, thereby, findings of the labour Court in the impugned order finding the workman guilty of misconduct has become final.

14. I have gone through the impugned award passed by the labour Court carefully. On going through the findings of the labour Court, it is clear that the labour Court has found that the workman was having unblemished past record, the workman has admitted the guilt and made good of the loss by depositing Rs.1 lakh with a hope that he will be saved from the capital punishment of dismissal that a clerk by name Rajendran has agreed to make good of the loss by him, if workman Palani has failed to deposit Rs.1 lakh, workman has committed the misconduct on a spur moment due to dire need of help and that he has rightly confessed the guilt.

15. The labour Court has decided to convert the punishment imposed by the disciplinary authority from dismissal to that of voluntary retirement. In order to come to the conclusion that punishment imposed is disproportionate, the labour Court was not clear as to how the



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punishment is disproportionate.

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16. Labour Court is supposed to look into the charges levelled against the petitioner, defence taken by the petitioner and other connected aspects. On going through the penultimate paragraph of the impugned order of the labour Court, it appears that the labour Court has shown misplaced sympathy on the petitioner while coming into the conclusion of converting the punishment.

17. One of the grounds taken by the labour Court is that the petitioner had unblemished past record. It is the settled legal position that when question of fraud and misappropriation is in question, the judicial or quasi-judicial authorities shall not take into consideration the past unblemished record in order to take lenient view. The other major ground recorded by the labour Court for showing sympathy on the petitioner is that after committing misconduct, workman has come forward and has admitted the guilt and also made good of the loss of Rs.1 lakh sustained by the Bank with a hope that he will be saved from the capital punishment.



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18. It is true that the petitioner has come forward and admitted the guilt and paid the money of Rs.1 lakh in two instalments. This aspect though simplified the role of Management in deciding the fate of the petitioner, still this Court is of the opinion that it cannot be a ground for taking lenient view. In fact, it is other way round. The petitioner has confessed the guilt. Once the petitioner has voluntarily confessed the guilt in writing and paid the money back, then, the punishment has to be issued basing on the alleged mis conduct and not on the basis of how and under what circumstances, petitioner has admitted the guilt.

19. It is also observed by the labour Court that Clerk of the same branch by name Rajendran has volunteered to make good of the loss of Rs.1 lakh. If at all Rajendran has also committed misconduct, he also could have charged and should have faced suitable punishment. Involvement of Rajendran even if it is there that does not exonerate the petitioner and it should not have driven the labour Court to take lenient view in respect of punishment.

20. The punishment has to be inflicted basing on the gravity of the



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charges proved. It is alleged that the petitioner has stolen the Demand Draft from the branch of a Nationalised Bank and forged and fabricated a Demand Draft of Rs.1 lakh and gave it to his friend, who has encashed the Demand Draft for Rs.1 lakh. The Bank holds money of people and the employees working in the Bank are the trustees. People deposit money in the Bank with an idea to withdraw and use the money as and when required. If the money deposited by the people in the Nationalised Bank is misused by the employees of the Bank, people will lose trust and confidence in the banking system. If it is the other misconduct of absenting himself without any information or committing some irregularity in accounting etc., it can be exonerated sympathetically. But the petitioner has gone to the extent of stealing the empty leaf of the Demand Draft and fabricating a Demand Draft for Rs.1 lakh and encash it. Therefore, the action of the petitioner in committing the misconduct is unpardonable at any stretch of imagination. Normally, in those circumstances, Police case will be registered.

21. Considering the circumstances, this Court is of the firm view that misconduct admittedly committed by the petitioner does not require any sympathetic consideration. The reasoning given by the labour Court for



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converting the punishment of dismissal to that of the voluntary retirement are not at all convincing, thereby, they are perverse. Accordingly, orders of the labour Court required to be interfered with.

22. In the result, this writ petition is allowed and the impugned order dated 18/3/2010, passed by the labour Court in I.D.No.54 of 2007 is set aside, restoring the punishment of dismissal imposed by the disciplinary authority against the petitioner. No costs. Consequently, the connected Miscellaneous Petitions are closed.

3/7/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

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Chennai 600 006.

Dr.D.NAGARJUN,J



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mvs.

Pre-delivery order made in
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