



W.P.No.22344 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON  
21.11.2023

PRONOUNCED ON  
31.01. 2024

**CORAM:**

**THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

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DBS Bank India Limited (Formerly known as Lakshmi Vilas Bank  
Represented by its Senior Vice President-HR,  
Office at No.4,  
Sardar Patel Road,  
Guindy, Chennai – 600 032. ... Petitioner  
(Petitioner cause title amended vide order dated 07.02.2023 made in  
W.M.P.No.2639 of 2023 in W.P.No.22344 of 2005)

Vs

1.S.Murugan  
2.Deputy Commissioner of Labour/  
Appellate Authority,  
Tamil Nadu Shops and Establishment Act,  
Coimbatore. ... Respondents

**PRAYER:-** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2<sup>nd</sup> respondent in T.N.S.E.No.2 of 2004 and its orders dated 08.04.2005 and quash the same.

For Petitioner : MrAnand Gopalan  
for Mr.G.Anandakrishnan



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For R1 : Mr.V.Ajoy Khose

For R2 : Mr.R.Neethi Perumal  
Government Advocate

### **ORDER**

This Writ Petition has been filed challenging the order issued by the 2<sup>nd</sup> respondent, by setting aside the order of termination of the 1<sup>st</sup> respondent.

2. Heard, Mr.Anand Gopalan, learned counsel for Mr.G.Anandakrishnan, learned counsel for the petitioner, Mr. V.Ajay Khose, learned counsel for the 1<sup>st</sup> respondent and Mr.R.Neethi Perumal, learned Government Advocate appearing for 2<sup>nd</sup> respondent.

3. The learned counsel for the petitioner would submit that, the 1<sup>st</sup> respondent was employed as a sub-staff with the petitioner bank in Coimbatore Branch on 12.02.1980. Due to several misconducts, the 1<sup>st</sup> respondent was transferred from Arakandanallur to Ramanathapuram Branch, for which charges were framed against him. On 03.07.1998, the petitioner/ Management has framed a charge for disobeying the Branch Manager for non-compliance of the instructions, further charges were



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that, he left the Branch without obtaining permission and without completing the day book. He would contend that on 06.01.1999, six additional charges were also framed against the 1<sup>st</sup> respondent. The charges were framed for issuing Cheques without arranging funds, availed leave for 202 days during the year 1998, being not punctual in attending duties and he would take unauthorized leave.

4. He would submit that, on 11.12.1998, when the manager questioned the absence of the 1<sup>st</sup> respondent, during the office hours, he had replied in an irresponsible and indecent manner and had also misbehaved with the Manager in the presence of the customers. For which charges have been framed against the 1<sup>st</sup> respondent and had called upon him to submit his explanation, he did not turn up to give any explanation. Thereafter, an enquiry was conducted against the 1st respondent by the Enquiry Officer and he was found guilty of all the charges, based on the findings of the enquiry officer the Disciplinary Authority of the petitioner Bank had dismissed the 1<sup>st</sup> respondent from the services on 04.05.2002.

5. He would further submit that, against the order of dismissal the 1st respondent has preferred an appeal before the Appellate Authority of



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the petitioner and the Appellate Authority after going through the entire documents, records and evidences had confirmed the order of termination of the 1<sup>st</sup> respondent. Aggrieved by the same the 1<sup>st</sup> respondent preferred an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 before the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent without appreciating the documents and evidences given by the petitioner, had set aside the order of dismissal against the 1<sup>st</sup> respondent .

6. He would further submit that, the 1<sup>st</sup> respondent has filed W.P.M.P Nos.24358 and 30248 of 2005, before this Court praying to either reinstate the 1<sup>st</sup> respondent or in the alternative to pay at least the last drawn wages, till the disposal of the writ petition and by direction of this Court, dated 26.07.2005, the petitioner bank had deposited the entire backwages of sum of Rs.4,85,595/- in a Nationalised Bank and this Court had also stayed the order passed by the 2<sup>nd</sup> respondent and had allowed the 1<sup>st</sup> respondent to withdraw 25% of the amount deposited and remaining 75% to be in the bank. He would submit that on compliance to the order of this Court dated 26.03.2006, the petitioner bank has paid a



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sum of Rs.13,902/- to the 1<sup>st</sup> respondent as his last drawn wages till his date of retirement in November 2018.

7. He would also submit that, if the 1<sup>st</sup> respondent submits his application for the provident fund the petitioner bank is ready to settle the PF amount of Rs.77,920/-. The petitioner bank has paid a sum of Rs.1,63,946.80/- to the 1<sup>st</sup> respondent as Gratuity, the same was challenged before this Court, and the bank has reversed the transaction made. He would further submit that 1<sup>st</sup> respondent is not eligible for the pension as under the Regulation No.22(1) of the Pension Regulations, 1995 of the Lakshmi Vilas Bank Ltd.,. Therefore, this writ petition is filed to set aside the order of the 2<sup>nd</sup> respondent dated 08.04.2005, made in T.N.S.E No.2 of 2004, and seeks to allow this writ petition.

8. Countering his arguments, the learned counsel for the 1<sup>st</sup> respondent would submit that, the 1<sup>st</sup> respondent was appointed as a clerk in the petitioner bank on 12.2.1980. He would contend that by proceedings dated 03.07.1998, charges were framed against the 1<sup>st</sup> respondent as if he had violated para 9.5 (e) of the Bipartite Settlement for which he had also submitted his explanation. Further on 06.01.1999,



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six charges were framed against the 1<sup>st</sup> respondent for which also he had submitted his explanation.

9. He would further submit that, disciplinary proceedings were initiated against the 1<sup>st</sup> respondent for the charges framed and the enquiry officer had conducted the enquiry without following the procedure contemplated under the Regulation, and the 1<sup>st</sup> respondent was not furnished with the copy of the documents marked in enquiry proceedings and he was not allowed to produce any documents and no opportunity was given to defend his case. On 28.3.2002, second show cause notice was issued to the 1<sup>st</sup> respondent directing him to take part in the personal hearing to be held on 10.04.2002, and subsequently by order dated 04.05.2002 the 1<sup>st</sup> respondent was dismissed from service. The 1<sup>st</sup> respondent has filed an appeal before the appellate authority of the petitioner bank and the same was dismissed stating that the 1<sup>st</sup> respondent has not produced any new materials.

10. He would further submit that, the 1<sup>st</sup> respondent has filed a appeal before the 2<sup>nd</sup> respondent and the submission of the 1<sup>st</sup> respondent before the 2<sup>nd</sup> respondent was that the enquiry conducted by the enquiry



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officer was in violation of the principles of natural justice and the charges framed against the 1<sup>st</sup> respondent was not proved by the management and the enquiry officer had shifted the burden of proof on the employee, which vitiates the entire enquiry proceedings. Some of the charges cannot be termed as misconduct as defined in the Bipartite settlement. The findings of the enquiry officer was perverse and had relied on the evidence of MW1 an interested witness in the absence of any corroboratory evidence to support and substantiate the charge of disobedience.

11. He would further contend that, the dishonourment of the cheques issued by the employee was considered as a misconduct without consideration of any facts. The 1<sup>st</sup> respondent has submitted his leave application and it was wrongly held that the 1<sup>st</sup> respondent had not taken any permission and that the management has not sanctioned any leave. When the 1<sup>st</sup> respondent was served with the second show cause notice no findings of the enquiry was enclosed, for which the 1<sup>st</sup> respondent was not able to submit his explanation. He would further submit that, considering the case of the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent by order dated 08.04.2005, had set aside the order of dismissal. Therefore, he



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would submit that the order of the 2<sup>nd</sup> respondent is correct and seeks to dismiss the writ petition.

12. The learned Government Advocate, for the 2<sup>nd</sup> respondent would contend that, seven charges of misconduct had been framed against the 1<sup>st</sup> respondent , first charge was framed on 03.07.1998 and six more charges were framed on 06.01.1999. He would submit that the 2<sup>nd</sup> respondent has set aside the order of dismissal as against the 1<sup>st</sup> respondent, based on the findings that the leave of the 1<sup>st</sup> respondent were all sanctioned and his leave was not refused at any time by the management, and regarding the charge of leaving the office without completing the day book was also refuted by the 1<sup>st</sup> respondent in his cross examination that he had left the office only after completing the day book and after obtaining permission from the Manager. Further he would submit that the 1<sup>st</sup> respondent had himself stated that he had availed leave for 202 days during the year 1998. Further the Manager in his examination has stated that if there is sufficient leave for the employees then in the leave application it shall be written as "Forwarded", and if there is no leave available the same shall be written as "Not forwarded",



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and on perusal of the said leave applications the Manager of the petitioner bank has either mentioned “forwarded” or “not forwarded” but there is no mention as to the 1<sup>st</sup> respondent has taken unauthorised leave.

13. He would further submit that, there were only two instances of coming late has been mentioned against the 1<sup>st</sup> respondent and there was no other instances in the past and that the claim of the petitioner bank that the 1<sup>st</sup> respondent was not punctual to office, and he used to take unauthorised absence habitually cannot be considered. If the employee is said to have taken unauthorised leave then there should be any action taken against him but the petitioner bank has not taken any such action. To the charge of indecent behaviour of the 1<sup>st</sup> respondent to the Manager in the presence of other Staff and customers, no one was examined to prove or disprove the said claim. He would further submit that the petitioner bank has not established as to how the conducts of the 1<sup>st</sup> respondent was prejudicial to the interest of the bank or how by negligence the 1<sup>st</sup> respondent has caused serious loss to the petitioner bank. Hence the 2<sup>nd</sup> respondent, based on the evidences and records had



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set aside the order of dismissal as against the 1<sup>st</sup> respondent and would contend that this writ petition is devoid of merits and is liable to be dismissed.

14. I have heard the submissions on behalf of the respective parties and have perused the materials available on record before this Court.

15. The 1<sup>st</sup> respondent had been issued with two set of charges by the petitioner, upon which an enquiry had been conducted by an enquiry officer who has submitted his report holding that all the charges that were framed against the petitioner in both the charge memos had been established. Based upon the said report, an order of dismissal was passed by the disciplinary Authority against which the petitioner had preferred an Appeal. The Appellate Authority after considering various grounds raised by the 1<sup>st</sup> respondent, rejected the Appeal. Against which the 1<sup>st</sup> respondent had preferred a Statutory Appeal under the provisions of Tamil Nadu Shops and Establishment Act. The 2<sup>nd</sup> respondent by the impugned order had set aside the order of punishment. The 2<sup>nd</sup> respondent had concluded that the enquiry that had been conducted against the 1<sup>st</sup> respondent had been made in a fair and proper manner. He had given a



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specific findings that during the domestic enquiry proceedings reasonable opportunity had been provided to the appellant namely the 1<sup>st</sup> respondent in this Writ Petition. He had specifically rejected the claim of the 1<sup>st</sup> respondent that he was not given reasonable and sufficient opportunity during the enquiry, as the same has not been proved. However, the 2<sup>nd</sup> respondent had proceeded to deal with the findings given by the enquiry officer and had come to a conclusion that the appellant had been dismissed from service not for a reasonable cause.

16. I have perused the reasonings given by the 2<sup>nd</sup> respondent in holding that none of the charges had been proved. This Court takes into an example of one of the charge namely that the 1<sup>st</sup> respondent absented himself for 202 days in the calender year 1998. The evidence of the Manager who had been examined as RW1, he had specifically deposed that the leave letters would be forwarded only if the concern employee has sufficient number of leaves to the higher authority for sanction of leave and if the employee does not have sufficient number of leaves, then the same would not been forwarded for sanction. In the case of the 1<sup>st</sup> respondent, the documents have been marked to indicate certain leave



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applications have not been forwarded which would mean that the 1<sup>st</sup> respondent did not have sufficient leave to his credit. In spite of the same, the 1<sup>st</sup> respondent had not attended duty on the said dates.

17. To dislodge the findings of the enquiry officer that the charges has been proved, the 2<sup>nd</sup> respondent had not given any reasonings whatsoever to hold that such a charge has not been proved. Similarly, to dislodge the findings of the enquiry officer for the other charges also, the 2<sup>nd</sup> respondent had not given any findings to hold that the findings of the enquiry officer is perverse. In such circumstances, I am of the view that the order impugned in holding that the punishment imposed is not for a reasonable cause is wholly perverse and without any reasonings whatsoever.

18. It was pointed out during the course of the hearing that the 1<sup>st</sup> respondent had attained the age of superannuation. I have also considered the material facts available on record and I am of the view that for the offences that has been charged against the petitioner, the punishment of dismissal from service is disproportionate. The 1<sup>st</sup> respondent cannot be left without a punishment being inflicted upon him for the alleged proved



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misconduct by the enquiry officer. It is also brought to the notice of this Court that the petitioner had deposited a sum of Rs.4,85,595/- pursuant to the interim order passed by this Court, out of which the 1<sup>st</sup> respondent was permitted to withdraw 25% of the amount and that pending this Writ Petition till the date of his superannuation, the 1<sup>st</sup> respondent had been paid a sum of Rs.13,902/- which is the last drawn wages of the petitioner on the date of his dismissal from service.

19. The learned counsel for the petitioner had also submitted that the petitioner was entitled to a sum of Rs.77,920/- towards his PF dues and also a sum of Rs.1,63,946.80/- towards gratuity. In view of the challenge to the claim of the gratuity, the Bank had reversed the transaction. Since, I have come to the conclusion that the order of the 2<sup>nd</sup> respondent, setting aside the order of dismissal is perverse as no reasons have been given and having come to the conclusion that the punishment imposed by the petitioner on the 1<sup>st</sup> respondent was disproportionate to the charges that had been framed and also considering the fact that the 1<sup>st</sup> respondent had attained the age of superannuation as early as in the year 2018. I do not wish to impose any punishment on the petitioner since the



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petitioner had already been superannuated from service and if any punishment is imposed, the question of him undergoing such punishment looms large . But, it would be only fit and proper in such circumstances to permit the petitioner to withdraw the balance backwages that had been deposited pursuant to the interim order passed by this Court and also the PF and Gratuity amount for which he is entitled to as provided under law and a further sum of Rs.2,00,000/- in lieu of his reinstatement alone.

20. With these observations, this Writ Petition is disposed of. However, there shall be no order as to costs. Connected miscellaneous petitions are closed.

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Index : Yes/No  
Speaking order : Yes/No  
Neutral Citations : Yes/No



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**K.KUMARESH BABU,J.**

Gba

To

Deputy Commissioner of Labour/  
Appellate Authority,  
Tamil Nadu Shops and Establishment Act,  
Coimbatore.

***A Pre-delivery order made in  
W.P.No.22344 of 2005***



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