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W.P.No.262:



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.11.2023

DELIVERED ON: 31.01.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.26250 of 2010

The Management of Indian Bank,
Personnel Dept.
Head Office, 66, Rajaji Salai,
Chennai – 600 001.
rep. by its Assistant General Manager
...Petitioner

vs.

1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, Chennai – 6.

2.D.Chandrasekhar

...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 1st respondent in ID.No.68
of 2007 and quash its Award dated 12.08.2010.

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

For Respondents : R1 – Court



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for Mr.V.Subramani for R2

ORDER

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2.Heard, Mr.P.Raghunathan, learned counsel for the petitioner and Mr.K.M.Ramesh, learned Senior Counsel appearing for Mr.V.Subramani, learned counsel for the second respondent.

3.The learned counsel appearing for the petitioner would submit that the second respondent was working as a cashier in the petitioner Bank. On 05.06.2000, the second respondent informed the Assistant Branch Manager that there was a difference of Rs.70,000/- in the closing cash balance. Later, the second respondent adjusted the said amount by raising a debit voucher for Rs.70,000/- i.e., after closing of the cash balance, the second respondent remitted Rs.50,000/- which was taken as late receipt and on the next day, he remitted the balance Rs.20,000/-. On 23.06.2000, the second respondent submitted a letter to the petitioner Bank admitting his mistake, where he has stated that he had incurred debt of Rs.50,000/- from a financier along with interest he was liable to repay Rs.70,000/-. Further, it was stated in the letter that



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he had failed to arrange funds to pay the financier within the time agreed, hence he had misappropriated the funds of the Bank.

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4.He would submit that from the letter written by the second respondent, it is evident that he has misappropriated Rs.70,000/- of the Bank cash and had retained the money till he remitted it back. On 06.06.2000, a show cause notice was issued to the second respondent. On 23.06.2000, the second respondent gave a reply admitting his mistake. A charge memo was issued on 23.10.2000 and asked the second respondent to appear for an enquiry. In the enquiry, three witnesses were examined and the employee had accepted his mistake. On 31.05.2002, the Enquiry Officer submitted his report holding that the charge against the second respondent was proved. The petitioner Bank on considering the request made by the second respondent did not terminate him from the services but had discharged him from service with superannuation benefits without disqualification for future employment. On 04.09.2002, a second show cause notice was issued proposing the punishment of discharge with superannuation benefits and he was directed to appear for personal hearing on 27.09.2002. In the meantime, on 14.09.2002, the second respondent gave his representation and after considering the same, on 25.02.2003, the second respondent was discharged from service with superannuation benefits.



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5.He would further submit that the order of discharge specifically mentioned that it would not affect terminal benefits and the second respondent/employee was paid Rs.87,883/- towards gratuity and PF accumulation of Rs.30,560/- was also settled. He would contend that if the petitioner Bank had dismissed the second respondent then, he would have forfeited his right to receive gratuity. But the petitioner Bank had shown leniency and compassion in the matter of punishment awarded to the second respondent. The only mitigating factor in favour of the second respondent for showing compassion was that he had admitted his mistake at the earliest point of time and also remitted the money which he had misappropriated. The second respondent filed an appeal before the General Manager/Appellate Authority, against the order of dismissal and the same was dismissed stating that there is no merits and had confirmed the order of punishment dated 19.07.2005.

6.He would further submit that the second respondent raised an industrial dispute challenging his order of discharge from service. On 12.08.2010, the Industrial Tribunal held that the charge was duly established, but the second respondent deserves lesser punishment and had directed the petitioner Bank to reinstate the second respondent with continuity of service with all attendant benefits and back wages payable limited to 15% as that the forfeiture of the



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remaining 85% of the back wages to be a punishment. Therefore, he prays this

Court to allow this Writ Petition.

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7. Countering his arguments, the learned Senior Counsel appearing for the second respondent would submit that the second respondent had joined the services of the petitioner Bank as Clerk/Shroff in December 1988 in Kalavai Branch in North Arcot District and subsequently, he was transferred to Chennai and worked in various branches. He would contend that the second respondent is a physically handicapped person with 75% disability. On 06.06.2000, the second respondent was issued with a show cause notice when he was working as a Cashier in G.A.Road Branch, Chennai alleging that there was a cash difference of Rs.70,000/- in the closing balance on 05.06.2000 and that the second respondent/employee had misappropriated the same.

8. He would submit that it was the case of the second respondent that he had availed a loan from a financier and when the creditor pressurized the second respondent to repay the loan amount with interest and on the agreed day to repay the amount, the second respondent was not able to arrange the funds, therefore the employee took the money of the customers from the Bank and had also remitted the amount to the Bank and there is no loss to the petitioner Bank.

He would submit that the second respondent was issued with a charge memo

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dated 23.10.2000 and a domestic enquiry was conducted on 23.05.2001, 08.06.2001 and 08.10.2001. He would submit that the Enquiry Officer acted in a biased and prejudiced manner and such the enquiry conducted by the Enquiry Officer is not fair & proper and is vitiated with illegalities and irregularities.

9.He would further submit that the petitioner Bank supplied a copy of the enquiry report on 05.06.2002 and the second respondent has filed a detailed explanation on 22.06.2002 to the Disciplinary Authority. Thereafter, the petitioner Bank issued a show cause notice No.CON VIG/176/DPC-351/2002 dated 04.09.2002 proposing the punishment of discharge from service with superannuation benefits and without disqualification from future employment under Clause 6(d) of the Bipartite Settlement dated 10.04.2002. The second respondent has sent a reply to the show cause notice by letter dated 22.06.2002 and had appeared for the personal hearing which was held on 27.09.2002 before the Disciplinary Authority and stated that the findings of the Enquiry Officer are not correct and pleaded not guilty.

10.The learned Senior Counsel would further submit that the petitioner Bank by order dated 25.02.2003, imposed a punishment discharging the second respondent from Bank's service in terms of Clause 6(d) of the Settlement on Disciplinary Action and Procedure for Workmen dated 10.04.2002 for certain



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alleged misconduct. Against the order of discharge, the second respondent had raised an industrial dispute in 1.D.No.68 of 2007. He would contend that the first respondent had given a finding that the punishment imposed on the second respondent in discharging him from service was not justified and had directed the petitioner Bank to reinstate the employee into service with 15% back wages with continuity of service and all other attendant benefits. Therefore, he would further submit that the action of the petitioner Bank in imposing punishment of discharge from service in terms of Clause 6(d) of the Bipartite Settlement dated 10.04.2002 is a case of victimization and unfair labour practice. Hence, he prays to dismiss the Writ Petition.

11.I have heard the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

12.In the present case, the first respondent Tribunal had found that the charges have been proved against the second respondent. It had gone out by holding that the punishment imposed upon the second respondent by the petitioner Bank was disproportionate. To come at the said conclusion, the first respondent had taken into consideration the reasons for leniency claim to have been shown by the petitioner Bank in imposing a punishment of discharge with superannuation benefits and also giving liberty to the second respondent to again apply for the services if he is otherwise qualified.

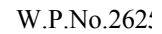


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13.The first respondent Tribunal had held that denial of 85% of back wages would be an appropriate punishment. But, however, it had gone further and held that the petitioner does not challenge the award on further appeal, the petitioner was at liberty to impose a minor punishment such as withdrawal of increments that too not beyond two increments either with or without cumulative effect. This does not augur well with this Court. If it had found that the order of punishment imposed by the Disciplinary Authority was disproportionate either it should have imposed a lesser punishment or remitted back the matter for imposing a lesser punishment at the hands of the Disciplinary Authority. Having held that the denial of the 85% of the back wages is a proper punishment, it ought not to have held that if the Disciplinary Authority does not prefer any appeal against the award then, it was open to it to pass an order of a punishment of stoppage of increment.

14.Be that as it may, the only issue that looms upon this Court is as to whether the order of the Tribunal in holding that the second respondent deserves the lesser punishment is correct or not. In the present facts of the case as held by the first respondent Tribunal, the petitioner Bank had taken a lenient view and had imposed a punishment of discharge with a liberty to the delinquent second respondent herein to opt for any opening in the services of the Bank, this would indicate that the petitioner Bank was open to continue his services if he



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K.KUMARESH BABU, J.

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To

The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, Chennai – 6.

**A pre-delivery order in
W.P.No.26250 of 2010**

31.01.2024