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W.P.No.192 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2024

PRONOUNCED ON : 27 .06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.192 of 2015

and

W.M.P.No.34426 of 2023

and W.M.P.No.6130 of 2021

The Chief Manager,
ICICI Bank
ICICI Towers,
Ambattur Estate
Ambattur, Chennai

... Petitioner

Vs.

1.M.Lakshmanan

2.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court, Shastri Bhavan
Chennai.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records connected with I.D.No.45 of 2013 and quash the Award dated 31.10.2014 passed by the 2nd respondent i.e; The Presiding Officer, Central Government Industrial Tribunal, Chennai.



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For Petitioner : M/s.Sanjay Mohan for
M/s. S.Ramasubramaniam & Associates

For Respondents :
(for R1) : M/s.V.Prakash, Senior Counsel
for Mr.M.K.Krishnamoorthy

(for R2) : Tribunal

ORDER

Challenging the award passed by the Central Government Industrial Tribunal Cum Labour Court, the petitioner bank is before this Court.

2. It would be necessary to allude to the facts of the case in order to morefully appreciate the grievances of the petitioner to the award under challenge.

3. The 1st respondent herein had raised an Industrial Dispute and after the failure of the conciliation process the dispute was referred for adjudication by the Government of India Ministry of Labour and Employment.



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Case of the 1st respondent/Employee

4. The 1st respondent's case is that he had joined the services of the Bank of Madura as a Clerk on 04.02.1980. In the year 2000, the said bank had got merged with the petitioner bank. The 1st respondent had continued in the service of the bank even after the merger. He would submit that he is a workman as defined under Section 2(s) of the Industrial Dispute Act. The 1st respondent would submit that the workers of the Bank of Madura had a registered Union called The Madura Bank Employees Union. The petitioner bank did not have such a Union and were not in favour of the continuance of the Union. After the merger, the Union had been renamed as the ICICI Bank Employees Union under its earlier registration itself. The petitioner were keen on dismantling the Union. Therefore, they started indulging in various unfair labour practices against the members of the Union.

5. The 1st respondent would submit that around 700 workers who were originally with the Bank of Madura were targeted under the guise of the scheme called Earlier Retirement Option (ERO). The 1st



respondent had filed a Writ Petition questioning the scheme. This action on the part of the 1st respondent was frowned upon by the petitioner Bank and they developed a vindictive attitude against the 1st respondent.

6. The 1st respondent would submit that in order to reduce the strength of the Union, the petitioner had forced Clerical Cadre employees to accept the promotions so that they ceased to be workmen and would stop participating in the Union. To protect their livelihood many of them had accepted the so called promotion. The 1st respondent would submit that though clerical staff members were promoted as Senior Officers, Service Staff Members and Junior Officers, their functions, roles and responsibilities continued to be the same as before and it was only a case of re-designation of the post. The petitioner had also succeeded in dissolving the two Unions, namely, the Sangli Bank Employees Union and the Union of Bank of Rajasthan.

7. The 1st respondent would submit that the Union had raised



Charter of Demands to the petitioner bank for wage increase and other issues. However, the same has not been given consideration to date.

The 1st respondent being the General Secretary of the Union was informed not to espouse the cause of the workmen. However, the 1st respondent chose to ignore this and on 23.05.2010, had made a representation before the management as a General Secretary of the Union for seeking revision of HRA. The bank without considering the demand transferred the 1st respondent from the Retail Liability Groups' Nanganallur to Sriperumbudur. The other active office bearers of the Union were also transferred nearly 500 km away. The 1st respondent had protested to the said transfer.

8. Once again, on 28.08.2010, he had raised another demand to confer permanency to the temporary employees and not to victimize the ICICI Bank employees who wanted to join the Union. Therefore, it is the contention of the 1st respondent that the petitioner bank had engineered a false criminal complaint through its hand-picked workmen on the basis of 3 cheques of the year 2000 given by the 1st respondent to a co-employee of the bank and managed to secure the



1st respondent's conviction on 18.03.2010 in C.C.Nos.10 to 12 of 2009. The 1st respondent preferred an appeal against the said conviction and on 20.04.2010, the sentence imposed upon him was suspended. However, without awaiting the result of the appeal and informing the 1st respondent, the petitioner had terminated the services of the 1st respondent on 03.09.2010 stating that the 1st respondent had been convicted by a Criminal Court.

9. When the 1st respondent was out of the way, the petitioner bank took immediate steps to dissolve the Union. They had influenced the then Secretary and the President of the ICICI Bank Employees Union to file a Civil Suit bearing no.C.S.No.807 of 2010 and C.S.No.1005 of 2010 before this Court seeking a declaration that this respondent ceased to be the General Secretary of the Union with effect from 18.03.2010. The interim orders have also been granted which is in favour of the petitioner bank.

10. On 05.12.2012, the conviction passed in C.C.Nos.10 to 12 of 2009 was set aside by the District and Sessions Judge,



Kanchipuram. Therefore, since the dismissal order had been passed against the 1st respondent on account of the order of conviction, once the acquittal had been ordered, the 1st respondent had approached the petitioner bank to set aside the dismissal order and to reinstate him with back wages which request was turned down. Therefore, the dispute had been raised by the 1st respondent.

Petitioner/Bank's Case:-

11. The petitioner bank had filed a counter statement putting forward a case that the termination of the 1st respondent from the services of the bank was necessitated due to the multiple instances of proved breaches of employment terms on his part over the years which had come to light with his conviction in the criminal case. His conviction in the criminal case and the termination were therefore independent of each other.

12. In the counter, the petitioner had further stated that the 1st respondent who was employed as a Clerk was carrying on the duties as a Cashier in the Sriperumbudur Branch of the Bank on the date of



his termination. The petitioner would submit that the 1st respondent was working as a Cashier in the bank and holding a position of trust as a custodian of public funds. In August 2010, the petitioner bank had received complaints from two persons against the 1st respondent. The nature of the complaint has been set out in a point form in the counter affidavit at paragraph no.6. The sum and substance of the complaint being that in the year 2001, the elder brother of both the complainants had started a finance and real estate business with one Lakshmanan (1st respondent herein) as a partner. Though there was no formal agreement between the parties, they had been doing their business on profit sharing basis.

13. Meanwhile, the 1st respondent had also borrowed money from the 3 brothers i.e. the complainants, and their elder brother as part of his business dealing that too when he was in full time employment of the petitioner bank. In 2002, the 1st respondents had promised these persons that if they pay a sum of Rs.30,00,000/- to him, he would purchase property in Selaiyur and convey the same to them. Following the assurance, the aforesaid persons had also paid the



sum of Rs.30,00,000/- each contributing a sum of Rs.10,00,000/-

However, the 1st respondent had neither conveyed the property nor repaid the amount despite of constant follow up. Thereafter, in the light of the repeated request, the 1st respondent had issued cheques to each of the brothers. These cheques were presented and had been dishonoured and consequently, the complainants had lodged 3 calendar cases against the 1st respondents under Section 138 of the Negotiable Instruments Act (hereinafter referred to as “NI Act”). On 18.03.2010, the 1st respondent has been declared guilty and the Judicial Magistrate, Alandur had convicted the 1st respondent to undergo 6 months imprisonment along with a fine of Rs.5,000/- for each three cases.

14. Thereafter, the petitioner bank had constituted an internal preliminary fact finding meeting to consider the conviction against the 1st respondent. A preliminary investigation meeting was held in Chennai and the complainants were given a personal hearing. They had also submitted their written submissions and the certified copy of the orders passed in C.C.Nos.10 to 12 of 2009.



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15. Since prima facie case had been made out against the 1st respondent that :-

i) he was doing a business for profit while in the service of the bank, a case of dual employment;

ii) he had borrowed large sums of money from third parties which is also not permitted as per the employment terms;

iii) had a criminal case filed against him which fact was suppressed to the bank; and

iv) was ultimately being convicted to undergo 6 months imprisonment as well as fine.

16. Therefore, in the light of the above, the Zonal Head, Tamil Nadu of the Bank had submitted his report to the General Manager & Retail Business Head enclosing the documents and written submission received from the complainants. He in turn referred the matter to the disciplinary authority to take appropriate action. The disciplinary authority had ultimately imposed the punishment.



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17. The petitioner would submit that the 1st respondent being a Cashier holding a sensitive post of public importance and handling cash of the public and the customers of the bank. There was a need for the bank to repose utmost confidence upon the person. Section 10(1)(b) of the Banking Regulation Act 1949 (hereinafter referred to as the “Act”) stipulates that a person who is convicted by a Criminal Court for an offence involving moral turpitude cannot be retained in service. The 1st respondent having been convicted in an offence under Section 138 of the NI Act, the bank had to in the interest of the bank and the public, cannot retain him in the service. Therefore, the order of termination had been issued. The petitioner would submit that the termination is for a reasonable, bonafide and justified cause and there cannot be any exception taken to the same.

18. The petitioner bank would also submit that the issue of termination has to be tested on the basis of the facts that stood on the date of the termination which does not alter after acquittal. Further in the light of Section 10(1)(d) of the Act and as the bank had lost



confidence on him, the services of the 1st respondent had been terminated. The petitioner bank would also submit that this Court in the judgement in OSA.Nos.335 to 337 of 2010 had concluded that the 1st respondent was not even competent to function as a General Secretary of the Union in view of his conviction and had also stated that he cannot not contest elections.

19. A rejoinder was filed by the 1st respondent denying the allegations contained in the counter statement and reiterating the contents of his claim statement.

Tribunal:-

20. The 1st respondent workman had examined himself as W.W.1 and marked Ex.W.1 to W.50. On the side of the petitioner bank one witness was examined and Ex.M.1 to M.25 were marked.

21. The Tribunal below on considering the evidence on record came to the conclusion that the 1st respondent had been terminated from his service without any justification and therefore he should be



reinstated in service within a period of 1 month of the award with 50% back wages, continuity of service and other attendant benefits and delay in payment would attract interest at 9 % per annum from the date of award till the date of payment. It is challenging the same the petitioner bank is before this Court.

Submissions:-

22. Mr.Sanajay Mohan, learned Senior counsel appearing on behalf of the counsel for the petitioner bank had made an initial submission that the Tribunal below has exceeded the scope of the reference. According to him the reference which reads as follows:-

" Whether the action of the Management of ICICI Bank Ltd., Chennai in terminating the services of Sri.M.Lakshmanan without conducting an enquiry is legal and justified? if not, to what relief the workman is entitled?

implied that the Tribunal was only entrusted with the task of finding out if the termination was legal or otherwise. However, the Tribunal has far exceeded its scope and had passed the award taking into



consideration factors that do not fall within the scope of the reference.

He would submit that the petitioner bank was left with no other alternative except to terminate the services of the 1st respondent in the light of Section 10(1)(b)(i) of the Act and therefore no motive could be attributed to the petitioner. The learned counsel would submit that the question which is to be considered is whether the offence for which the 1st respondent had been convicted involving an offence of moral turpitude or otherwise.

23. The learned counsel would submit that the 1st respondent has not disputed the issuance of the 3 cheques to 3 different persons and the dishonouring of these cheques. The learned counsel would rely upon the judgement of the Hon'ble Supreme Court reported in ***1997 4 SCC 1 - Allahabad Bank and Another Vs. Deepak Kumar Bhola***, where the term moral turpitude had been discussed. The learned Judges held that *“the most serious offences involving moral turpitude would be where a person is employed in a banking company....”* It means anything done contrary to the justice, honesty modesty, or good moral would be an offence involving moral



turpitude. The termination had been occasioned only on account of the fact that the 1st respondent had been convicted by the Judicial Magistrate, Alandur for an offence punishable under Section 138 of the NI Act.

24. The 1st respondent at the time of his termination was employed as a Cashier in the petitioner bank. The duties entrusted on the 1st respondent required an amount of trust and confidence being reposed upon him in the exercise his duties. The termination of the 1st respondent was not only on the ground of his being convicted but also on account of the fact that he has been involved in the real estate business, he has suppressed the criminal case and conviction thereafter. In the judgment cited supra, the learned Judges had held that one of the most serious offences involving moral turpitude would be where a person is employed in a banking company has been convicted of an offence but however it would depend on the facts of the case. The 1st respondent who was a Cashier in a bank has indulged in an act of dishonesty in as much as the cheques issued by him was



thereafter dishonoured and added to this he was a partner in a real estate firm while in the services of the Bank. Therefore, the learned counsel sought to justify the termination of the 1st respondent as one that has been occasioned on account of the mandate issued to the banking company not to continue employing persons who have been convicted of an offence involving moral turpitude and the issue of cheques and its dishonour being an offence involving moral turpitude, the action of the bank was justified.

25. The learned counsel would further submit that the award of the Industrial Tribunal smacks of special pleadings in favour of the 1st respondent. The Tribunal below has found fault with the petitioner bank for not conducting a formal inquiry, totally overlooking the fact that the termination was due to the 1st respondent's conviction for an offence, and therefore there was no necessity for conducting an enquiry. That apart, the learned counsel would submit that when the three cheques had been dishonoured and marked through witnesses as Ex.M.7 series before the Tribunal, it is for the 1st respondent to



adduce evidence and give special reasons to show that the 3 cheques were issued otherwise than in the course of his real estate business.

Therefore, in the absence of any special reasons being pleaded by the 1st respondents, the statement of the complainants that these cheques were issued in the course of a real estate business has to necessarily be taken at its face value. This is on account of the fact that the execution of the cheques have not been disputed by the 1st respondent. The 1st respondent has not let in any evidence to show that the cheques did not relate to the real estate business and it was on account of some other reasons. The learned counsel would submit that it is no doubt true that as on the date of the passing of award i.e. on 31.10.2014, the 1st respondent had been acquitted.

26. The learned counsel would submit that the finding of the learned Judicial Magistrate in coming to the conclusion that the cheques have been issued by the 1st respondent to the two complaints and their brother as a share of their profits in the business would clearly prove that the 1st respondent was carrying on business which is



a case of dual employment and a gross mis-conduct. The learned counsel would further submit that the Central Government Industrial Tribunal Cum Labour Court has failed to appreciate that the 1st respondent had attained the age of superannuation in the year 2019 itself and the 17 B wages are being paid till date and an excess amount of Rs.25,23,000/- from 2019 to 2024 is lying with the 1st respondent. The learned counsel would therefore submit that this Court should mould the relief granted not only to the benefit of the workman but also to the benefit of the bank and the bank should not been mulcted for no fault on its part.

27. Per contra, Mr.V.Prakash learned Senior counsel appearing on behalf of the counsel for the 1st respondent workman would submit that the termination of the 1st respondent was only a culmination of the victimization that the 1st respondent had suffered at the hands of the petitioner bank for espousing the grievances of the employees. In this regard, he would draw the attention of the Court to the annexure to Ex.W.37 which is a letter purported to have been addressed by the



complainants to the Bank. He would submit that the said complaint did not contain any details including the details about the criminal case and it is on the basis of this letter that the action against the 1st respondent has been taken that too without notice to the 1st respondent.

28. He would submit that the order terminating the services of the 1st respondent has been arrived at solely on considering these letters and an alleged internal preliminary fact finding meeting said to have been conducted on 31.08.2010. All of which has been done behind the back of the 1st respondent. He would also draw the attention of the Court to the fact that the victimisation is clearly evident from the fact that these complaints are dated 31.08.2010 and the fact finding exercise takes place on the very same day and the report was also given on the very same day and thereafter the matter was referred to the disciplinary authority on 01.09.2010. The disciplinary authority passed the order of termination on 03.09.2010 once again, without putting the 1st respondent on notice about the



report of the fact finding meeting. He would further submit that the ground on which the termination had been ordered is the conviction by the Criminal Court. The proceedings before the Criminal Court was on the basis that the 1st respondent was carrying on a partnership business with the complainants and their brother and in the course of this dealings the 1st respondent had not shared the profits with the complainants and their brother and consequently after demands were made to the 1st respondent cheques had been issued which had been dishonoured.

29. Against the order of conviction, the 1st respondent had filed appeals in C.A.Nos.23, 24 and 25 of 2010 and the learned Additional District and Sessions Judge, Kanchipuram at Chengalpet by his judgement dated 05.12.2012 was pleased to allow the appeal. The learned Judge has clearly found that the complainants had not proved the factum that the 1st respondent and they were carrying on a real estate business and the fact that they had given a sum of Rs.10,00,000/- each towards investments for running the real estate



business.

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30. The learned Judge also took note of the fact that the cheques in question pertained to the year 2001 and which clearly proved the defense raised by the 1st respondent that for an earlier loan blank signed cheques have been given to the brother of the complainant as security which has been misused for creating the cheques in question. This judgement has been upheld by this Court in CrI.A.Nos.768 to 770 of 2013. He would therefore submit that the entire case put forward by the complainants in the criminal proceedings was on the basis of false documents and the 1st respondent's stand has been vindicated by the judgement of the Sessions Court as well as this Court. Therefore, the question of the respondent's offence being one involving moral turpitude would not arise. He would rely upon the judgement of this Court reported **2016 2 L.W 147 - L.Manjula Vs. The State of Tamil Nadu** in support of his contention that the conviction for an offence under Section 138 of the NI Act would not amount to moral turpitude.



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31. The learned Senior counsel would further submit that the scope of interference by the High Court under Article 226 of the Constitution of India is limited to the extent of the order suffering from an error apparent on the face of the records. He would submit that the Tribunal below has allowed the claim not only on the ground that the enquiry is tainted but also on the ground that the offence is not one involving moral turpitude and therefore the termination is bad. Therefore, he would submit that the judgement of the Tribunal below does not require any re consideration.

Discussion:-

32. Heard the counsels and perused the records.

33. This Writ Petition is filed challenging the award passed by the Tribunal on the ground that the Tribunal has exceeded the scope of reference and has not restricted itself to only examining whether the termination is legal and justified particularly in the light of Section 10(1)(b)(i) of the Act. The facts and the evidence would indicate that



the petitioner bank had passed the impugned order of termination since they had received a complaint from two persons stating that the 1st respondent was convicted in a criminal case. Thereafter, the petitioner bank would submit that on the receipt of this complaint, the preliminary fact finding meeting was called for on the very same day and the preliminary fact finding meeting had called the complainants, heard them and concluded that there was a prima facie case against the 1st respondent that he was doing business for profit while in the service of the bank, borrowed large sums of money from the third party, had a criminal case filed against him and was convicted by a competent Court to undergo imprisonment for 6 months with provisions to have an additional 6 weeks imprisonment in case of failure to pay the fine. Based on this preliminary fact finding report, the disciplinary authority had taken cognizance of the matter on 01.09.2010 and on 03.09.2010, the order of termination had been passed.

34. A perusal of Ex.W.37 would indicate that the records which had been examined by the disciplinary authority was two complaints



dated 30.08.2010 received by the bank. These two complaints are in the form of e-mails said to have been received at 11.20 a.m. and 11.48 a.m. on 30.08.2010. In the complaint, the complainants have stated that the 1st respondent along with the complainants were doing a finance business and real estate business on a profit sharing basis without a formal partnership agreement. That in 2002 the 1st respondent had borrowed a sum of Rs.10,00,000/- from each of the complainants and their brother and thereafter had refused to pay the principal and interest and after several attempts they had been given cheques which on being presented had bounced. Immediately, on receiving this mail the petitioner bank has rushed into holding an internal preliminary fact finding meeting on 31.08.2010 which was conducted by the Zonal Head, Tamil Nadu of the Bank and the Chief Manager. On the very same day the complainants were given a personal hearing and it is stated that a written statement was obtained from them.

35. However, in their contention before the Criminal Court, the complainants have stated that they had invested in a real estate



business along with the 1st respondent and their brother Raja. The 1st defendant did not share the profits or principal to the complainants and after repeated demands these cheques were issued towards the share in the profits. This was not the contention which has been pleaded in the original complaint dated 30.08.2010 forwarded to the petitioner bank wherein it was contended that the cheques were issued towards the amount borrowed by the complainants.

36. In the light of this glaring contradiction between the complaint to the Bank and the case before the Criminal Court, it is rather surprising that the petitioner bank has proceeded with great haste to terminate the 1st respondent that too without giving him an opportunity to defend himself. The manner in which the inquiry has been conducted, preceeded by various actions taken by the 1st respondent challenging the bank's treatment of employees absorbed from the erstwhile Bank of Madura (as evidenced by Ex.W.3, W.7, W.12, W.36, etc.), clearly supplies the motive for this action.

37. Therefore, even on the date of which the petitioner had taken



action, the petitioner has not considered the contradictory statements taken by the complainants in the complaint that they had made to the bank and the complaint which has been projected before the Criminal Court. The Tribunal below has extensively considered this factum and has rightly come to the conclusion that the termination could be stated to be motivated by the petitioner bank.

38. Next, the question of whether the offence involves one of moral turpitude has to be examined. In the instant case, on the very facts of the case, by reason of the judgement in C.A.Nos.23 to 25 of 2010 of the learned Additional District and Sessions Judge, Kanchipuram at Chengalpet would clearly show that the complainants had not produced an iota of proof to show the existence of partnership business or the fact that they had each invested a sum of Rs.10,00,000/-. The appellate Court had gone on to hold that on perusal of the evidence the cheques which had been issued as early as in the year 2001 as a security for a loan borrowed by the 1st respondent from the complaints and their brother have been utilized for creating the cheques in question. The Appellate Court also observed that the



loan originally borrowed had been fully satisfied. This finding has been upheld by this Court in Crl.A.Nos.768 to 770 of 2013. In other words, the Courts below have clearly held that the alleged offence was non existent. Therefore, the question of the same being an offence involving moral turpitude does not arise.

39. The Division bench of this Court in the case referred to by the learned counsel for the 1st respondent has clearly held that a conviction for an offence under Section 138 of the NI Act cannot be termed as a punishment for an offence involving moral turpitude. The Black's Law dictionary defines moral turpitude as "a conduct that is contrary to justice, honesty or morality especially an act that demonstrate depravity". To put it in simple words moral turpitude means a shameful and wicked act which is so extreme and which departs from the ordinary standards of honest, good moral, justice or ethics as to be shocking to the moral sense of the community.

40. The Hon'ble Supreme Court in its judgement reported in the case of *Pawan Kumar Vs. State of Haryana and another* reported in (1996) 4 SCC 17 had defined the term moral turpitude as follows:-



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"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity".

41. They had also relied upon the policy decision taken by the Government of Haryana while accepting the recommendations of the Government of India, as regards taking in ex-convicts, convicted of offences involving moral turpitude into Government Service. In the recommendation, a list of offences which were considered involving moral turpitude was prepared. The Government had streamlined the determination of moral turpitude as follows:-

"... The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not;

(1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) whether the motive which led to the act was a



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base one.

(3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

42. In another judgment of the Hon'ble Supreme Court reported in **(2019) 18 SCC 135 - State Bank of India and others Vs. P.Soupramaniane**, the issue involved was the dismissal of an employee working with the State Bank of India at Puducherry. The discharge was on the basis of a conviction for an offence involving moral turpitude. The offences related to an assault where the charge framed against the employee was under Section 307 of the IPC and ultimately, he was sentenced to undergo 3 months imprisonment under Section 324 of the IPC. The bank, as in the instant case, had dismissed him from service invoking the provisions of Section 10(i)(b)(i) of the Banking Regulation Act, 1949. The dismissal which was challenged by the employee ended against him and his appeal also was dismissed. Thereafter, the union took up his cause which was also rejected and



challenging these orders, the petitioner had moved to the High Court which had also dismissed his appeal and ultimately, the matter travelled up to the Hon'ble Supreme Court.

43. The learned Judges had extracted the definition of moral turpitude as defined in the Black's Law Dictionary stated supra. They had also extracted the definition of moral turpitude from the Bouvier's Law Dictionary as follows: *"An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right duty between man and man."*, and from Burton Legal Thesaurus as follows :- *"Bad faith, bad repute, corruption, defilement, delinquency, discredit, dishonour shame, guilt, knavery, misdoing, perversion, shame, vice, wrong."*

44. The learned Judges had laid down certain tests that could be applied for judging if an offence is involving an moral turpitude as follows:-



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(a) Whether the act leading to conviction was such as could shock the moral conscience or society in general;

(b) Whether the motive which led to the act was a base one, and

(c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society.

45. Ultimately, the learned Judges allowed the appeal in favour of the employee by stating that a simple assault was different from an aggravated assault. In the case before the Hon'ble Supreme Court, the judges found that there was no motive for the respondent to cause the death of the victims. That apart, the Criminal Court had found the injuries to be of a simple nature and therefore, the Hon'ble Supreme Court concluded that there was no question of the offense involving a moral turpitude.



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46. In a judgement of the Hon'ble Supreme Court reported in ***Gian Singh Vs. State of Punjab (2012) SCC 303***, the Court was discussing the circumstances in which the High Court could quash criminal proceedings in non compoundable offences when there was a settlement between the parties. Here while discussing the issue, the Hon'ble Supreme Court had distinguished with examples as to what would constitute serious offences or offences of moral turpitude and offences arising out of a civil disputes.

47. With reference to the serious offences, the learned Judges had observed that offences like murder, rape, dacoity etc. and other offences of mental depravity under the IPC or the offenses of moral turpitude under Special Acts like Prevention of Corruption Act or offences committed by public servants while working in that capacity are being of a serious nature and could not be compounded. The Bench had quoted the following offences as being predominantly of a civil flavour like, matters arising out of civil disputes, mercantile, commercial, financial, partnership or such like transactions or offences arising out of matrimony particularly relating to dowry or



family dispute. Such offences, the Hon'ble Supreme Court held, could be settled and compounded. The learned Judges had therefore described offences involving moral turpitude as a serious offence.

48. A Division Bench of Kerala High Court in the judgement reported in *1995 SCC Online Ker 100 - Saseendran Nair Vs. General Manager, S.B.T.* had an occasion to deal with an offence similar to the case on hand. The question before the Division Bench was "*Whether the offence under Section 138 of the Negotiable Instruments Act would involve moral turpitude?*" The Bench took the following view:-

"that an offence under Section 138 of the Act need not necessarily take within its wings the offence of cheating as defined in Section 415 of the Penal Code, 1860. A cause of action for a criminal prosecution under Section 138 of the Act will arise, not on the date of issuance of the cheque, but only when the drawer of the cheque fails to pay the amount within the statutory period after he is called upon by the payee through a notice. A



person sometimes may issue a cheque knowing that there is no sufficient fund in his account but still with a hope that he would be able to make arrangements with his bankers to honour the cheque as and when it is presented by the drawee. Section 138 is in fact incorporated in the Negotiable Instruments Act only to give more credibility for cheques and not to cover the areas which are already within the jurisdiction of criminal court for the offence of cheating. So the question whether the act of issuing a cheque without sufficient funds will involve moral turpitude has to be considered de hors the element of cheating."

49. The Bench had also observed that moral turpitude has not been defined either in the Banking Regulation Act or in the penal statutes and therefore, they sought to rely upon the definition given in the Black's law dictionary and also relied upon K.J.Aiyar's Judicial Dictionary. They observed that the act which is unintentionally committed would not involve moral turpitude. Ultimately, the learned



Judges held that in the given facts, the offense under Section 138 of the NI Act would not involve moral turpitude.

50. Therefore, from the above discussion of the facts of the case and the various judicial pronouncements referred herein above it can be stated that the act of a dishonouring of cheques be treated as an offence so extreme that it shocks the conscience of the public. In fact, an offence of cheque dishonour is only between the complainant and the accused and does not involve the general public.

51. In the instant case, it has been clearly held that the cheques that were utilized to prefer the criminal complaint had been issued to the complainants and their brothers as early as in the year 2001 and the same have been misused and manipulated by the complainants to create the offending cheques. The Courts have also held that the complainants have not proved their case of the parties running a partnership business and the cheques being given in lieu of profits. The very edifice of the complainants' case in the criminal proceedings



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was found to be based on false allegations. Therefore, the dismissal of the 1st respondent on the ground that he had been convicted of an offences involving moral turpitude is baseless. Further, on account of the above finding, the case of the petitioner that the 1st respondent was involved in dual employment also fails. I see no reason therefore to interfere with the award passed by the Tribunal below and accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

27.06.2024

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court, Shastri Bhavan
Chennai.



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W.P.No.192 of 2015

P.T. ASHA. J.,

(shr)

W.P.No.192 of 2015
and
W.M.P.No.34426 of 2023
and W.M.P.No.6130 of 2021

27.06.2024