



W.A.No.1020 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM

THE HONOURABLE Mr.JUSTICE **M.S. RAMESH**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

W.A.No.1020 of 2024

and

CMP.No.7212 of 2024

The Management,
The Shevapet Urban Co-operative Bank Limited,
Shevapet, Salem-636 002.

... Appellant/petitioner

Vs.

1. The Presiding Officer,
Hon'ble Labour Court,
Salem.
2. N.Gnanasekar
S/o.S.P.Narayanasamy

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 27.07.2023 made in W.P.No.8757 of 2017.

For Appellant : Mr.L.S.M.Hasan Fizal

For Respondents : R1-Labour Court
Ms.S.Pavithrashini
for Mr.V.Manohar for R2



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J U D G M E N T

C.KUMARAPPAN, J.

The appellant is the writ petitioner. The instant writ appeal has been filed assailing the order of the learned Single Judge passed in WP.No.8757 of 2017 by and in which the learned Single Judge, while confirming the order of reinstatement passed in ID.No.377 of 2000, has set aside the direction to pay the back wages.

2. The brief facts which are necessary for the disposal of the instant writ petition is that, according to the writ petitioner, the 2nd respondent while functioning as Cashier in the appellant Society, between 06.08.1996 to 06.08.1997 and 07.08.1998 to 22.03.1998 in Kondalampatti and Kitchipalayam branches fabricated vouchers and receipts and has misappropriated a sum of Rs.1,16,317/-. In view of such misconduct, the 2nd respondent was terminated from service vide order dated 13.02.1999. Thereafter, the 2nd respondent raised an industrial dispute against the order of termination.



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3. The Labour Court on appreciation of oral and documentary evidence has arrived at a conclusion that the Co-Operative Bank has not made out a case of misappropriation. Hence, ordered for a reinstatement of the workman along with 40% of back wages and with continuity of service. The said order was assailed before the learned Single Judge. In the Writ Court, the learned Single Judge on analysis of the evidences, concurred with the finding of the Labour Court. However, the learned Single Judge has found that the Labour Court has mechanically awarded 40% of back wages. Therefore, held that the same is not sustainable, but, has confirmed the order of reinstatement. Not satisfying with the order of the learned Single Judge, the Management/Urban Co-operative Bank has preferred the instant writ appeal.

4. The learned counsel for the appellant/writ petitioner would vehemently contend that the Labour Court, as well as the Writ Court has not at all gone into the correct factual position. It was also contended that both the Court has not considered the letter of the workman/2nd respondent, admitting his guilt. Therefore, it is the contention of the learned counsel for



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the appellant that when the workman himself has admitted his guilt, the finding that no records produced to prove the charge is a perverse finding. It is also the contention of the learned counsel for the appellant-Bank that the admission of the workman is the best evidence, which both the Courts below has erroneously ignored. Thus, the sum and substance of the contention of the learned counsel for the appellant is that both the Court has arrived at an erroneous conclusion, which requires interference. It was also the submission of the learned counsel for the appellant that, even the learned Single Judge has not gone into the other merits of the matter. Therefore, prayed to interfere with the order of the learned Single Judge.

5. Per contra, the learned counsel for the 2nd respondent/workman would vehemently contend that the Labour Court has gone into the minute factual aspects and has arrived at a factual finding that the so called letter given by the workman admitting his misconduct is nothing but a fabricated document. It is also the contention of the learned counsel for the 2nd respondent/workman that the Labour Court has also given yet another factual finding that the Bank has not proved the alleged misconduct with acceptable evidence. Therefore, when the Labour Court has gone into all the



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factual position and has given a finding based on the available documents and evidences, while exercising the power of judicial review under Article 226 of The Constitution of India, the Writ Court cannot go into the factual finding unless such finding is a perverse. Therefore, it is the contention of the learned counsel for the 2nd respondent that the finding rendered by the Labour Court, as well as the learned Single Judge is based on available evidence and documents. Thus, there are no ground requiring any interference by this Court. Hence, prayed to dismiss the writ appeal.

6. We have given our anxious consideration to either side submissions.

7. According to the petitioner, the charge against the 2nd respondent is the misappropriation of a sum of Rs.1,16,317/-. Though the Management has conducted a domestic enquiry and found the workman guilty, the Labour Court has found that such enquiry was not fair and proper. Therefore, the same necessitated the Management to prove the charge of misconduct independently before the Labour Court. While analysing the evidence submitted by the Management before the Labour Court, the Court found that, the non production of the material documents such as account books of the



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relevant period is fatal, which entails the exoneration of the workman.

8. However, the learned counsel for the appellant drew the attention of this Court about the letters given by the workman, which was marked as M2 and M5. According to Bank, the 2nd respondent has admitted his guilt in the above documents. Therefore, it is their contention that when the admission of workman is available, the non production of account book cannot be a ground to disbelieve the management case.

9. At this juncture, it is pertinent to refer the finding of the Labour Court regarding the so called letter of admission. The Labour Court held that, had that letter been given by the 2nd respondent/workman, this would have been referenced in the charge itself. Whereas the charge did not refer about the letters containing the recital of admitting the guilt. Therefore, the Labour Court rightly disbelieved the case of the Management in respect of the so called admission. This Court is of the firm view that such finding is a finding of fact and we could not find any irrational or perversity over the such finding, besides such finding is based upon the available evidence.

10. It is pertinent to mention here that while exercising the power of



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judicial review, this Court cannot re-appreciate the entire evidence as an Appellate Authority. In this regard, it is useful to refer the following precedents:-

(i) In ***B.C.Chaturvedi Vs. Union of India*** reported in **(1995) 6 SCC 749**, the Hon'ble Supreme Court has held as follows. The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is



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guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

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18. *A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally*



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substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

(Emphasis supplied by this Court)

(ii) In **Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava** reported in (2021) 2 SCC 612, the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same can be interfered. The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-

“25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon



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consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

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29. *The Constitutional Court while exercising its jurisdiction of judicial review Under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”*

Therefore, the principles emerging from the above precedents are as follows:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of



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the Disciplinary Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

11. Therefore, in view of the above settled legal principles, the learned Single Judge has fully agreed with the findings rendered by the Labour Court as it was a finding of fact rendered based upon the evidence, and there was no perversity over the same. Therefore, though the learned counsel for the appellant has raised numerous grounds, we could not find any traction through these grounds, so as to interfere with the well considered order of the learned Single Judge. Thus, we could not find any merits in the writ appeal.



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12. In the result, this Writ Appeal stands dismissed. No costs.
Consequently, connected CMP is also closed.

[M.S.R., J.] [C.K., J.]
13.08.2024

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Index : Yes/No

Speaking order : Yes/No

Neutral Citation : Yes/No

To

1. The Presiding Officer,
Labour Court,
Salem.

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