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W.P.No.19727 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 05.03.2024
ORDER PRONOUNCED ON : 15.04.2024
CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.19727 of 2022
and
WMP.No.33202 of 2023

The General Secretary,
Federal Bank Employees' Union,
Central Office,
Post Box No.10,
Aluva-683 101.
Kerala.

...Petitioner

Vs.

The Federal Bank Limited,
Represented by its Chief Manager,
Personnel and Industrial Relation Department,
Federal Towers, Post Box No.103,
Aluva-683 101,
Kerala.

...Respondent

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Award passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D.No.2 of 2007, dated 08.02.2022 and also Preliminary Order dated 07.02.2020, quash the same by allowing the I.D. And direct the Respondent to reinstate the Workman Mr.M.Natarajan in service with all consequential benefits, including



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arrears of pay and allowances flowing therefrom, seniority and continuity of service.

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For Petitioner : Mr.P.V.S.Giridhar, Senior Counsel
for M/s. Giridhar & Sai
For Respondent : M/s.Mohammed Fayaz Ali

ORDER

Writ petition is filed for a writ of certiorarified mandamus calling for the records in the Award dated 08.02.2022 in I.D.No.2 of 2007 and the preliminary order dated 07.02.2020, to quash the same and direct the respondent to reinstate the workman in service with all consequential benefits including arrears of pay and allowances following there from seniority and continuity of service.

2. Petitioners case:

The petitioner union espousing the cause of the workman has filed the above writ petition. The workman joined the services of Federal Bank as bankman in 1980 and was promoted as clerk in 1983. The workman was under suspension from 10.04.2003 for misconduct of fraudulent withdrawal of amount. The workman was issued with the charge memo



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on 09.05.2003 stating that he had instigated and colluded with one K.Ramakrishnan, Bankman of the branch and fraudulently withdrew an amount of Rs.2,50,000/- from the SB account of one of its customer's viz., S.Raju, on 12 occasions during the period from May 1998 to September 2002 by using the withdrawal forms. It was stated that such withdrawal took place without his knowledge and consent. The workman sent a reply to the charge memo on 23.05.2003 denying the charges framed against him and calling for certain documents to prove his case. According to the workman even without responding to the request a communication dated 04.07.2003 was sent ordering for an enquiry into charges. The enquiry proceedings commenced from 08.10.2003 and concluded on 10.12.2004. On completion of enquiry, the enquiry officer gave his report on 13.04.2005 holding that the charges against the workman were proved. The workman submitted his objections to the enquiry report on 10.05.2005 and as the same was found to be unsatisfactory, the dismissal order was passed on 30.08.2005. The workman preferred an appeal to the Deputy General Manager/ Appellate Authority and the Appellate Authority by order dated



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24.01.2006 rejected the appeal. The workman thereafter raised the dispute which was registered in I.D.No.2 of 2007 before Central Government Industrial Tribunal-cum-Labour Court (herein after referred to as CGIT) challenging the dismissal order. The Labour Court passed an Award dated 20.04.2009 dismissing the I.D. Aggrieved by the Award of the Labour Court the petitioner filed writ petition before this Court in W.P.No.19854 of 2009 and this Court vide order dated 14.09.2017 set aside the Award of the CGIT and remanded the matter for fresh consideration within a period of 6 months. The respondent Bank challenged the order passed in the writ petition in W.A.No.897 of 2018, but the same was dismissed by the Division Bench of this Court on 24.04.2018. The order passed in the writ petition was confirmed but with a modification that the Labour Court should pass the Award within 4 months from the date of receipt of a copy of the Judgment in the writ appeal. On remand, CGIT dismissed the I.D vide Award dated 08.02.2022. The petitioner aggrieved by the Award of the CGIT as also the preliminary order dated 07.02.2020 has filed the above writ petition.



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3. The respondent filed detailed counter reiterating the facts of the case and further stated that the enquiry proceedings were conducted in a fair and proper manner and in strict adherence to the principles of natural justice. The respondent further submitted that the Labour Court had rightly passed the preliminary order by holding that the enquiry proceedings were conducted in a fair and proper manner and by following the principles of natural justice. The respondent submitted that the Labour Court passed the award on appreciation of the evidence on record and rightly concluded that the misconduct against the workman was proved and considering the gravity of the misconduct, rightly did not interfere with the punishment imposed by the respondent. The respondent therefore submitted that writ petition was without merits and the same deserved to be dismissed.

4. The learned counsel for the petitioner submitted that the Labour



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Court failed to appreciate that the enquiry was not conducted in fair, objective and impartial manner. The learned counsel further submitted that the enquiry proceedings were vitiated because the enquiry officer relied on the statements of defense and documents which were not cited in advance and further the petitioner was not given any opportunity to cross-examine the witnesses. The learned counsel further submitted that the respondent had failed to produce vital documents which were crucial to the petitioner's case and therefore the Labour Court ought to have drawn adverse inference against the respondent for failing to produce the same. In so far as proportionality of punishment is concerned, the learned counsel submitted that the Labour Court failed to note that the punishment was grossly disproportionate to the misconduct imputed against the workman. The learned counsel further submitted that the respondent had failed to take into consideration the past conduct of the workman while awarding the capital punishment of dismissal from service. The learned counsel therefore submitted that as the findings of the Labour Court were perverse, the same had to be interfered with in the writ



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proceedings and the Award accordingly set aside.

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5. The learned counsel for the respondent on the other hand submitted that the domestic enquiry was fairly and properly conducted and there was absolutely no violation of the principles of natural justice, in as much as the workman was given ample opportunity to cross examine the witnesses, but he did not utilise the same. The learned counsel further submitted that the petitioner did not establish any perversity in the findings of the Labour Court and in the absence of any perversity in the findings of the Labour Court, this Court while exercising jurisdiction under Article 226 of the Constitution of India cannot interfere with the Award of the Labour Court. The learned counsel further submitted that there was no rule that the list of documents and the list of witnesses be given in the charge sheet. According to the counsel the only requirement in law was that the defending party ought to be given an opportunity to cross examine the witnesses. With reference to drawing of adverse inference for not furnishing the 3 documents required by the petitioner is concerned, the



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learned counsel submitted that dehors the said documents, there were ample evidence on record to establish the charges framed against the petitioner. On the proportionality of punishment, the learned counsel submitted that the workman was charged with the grave misconduct of misappropriation of funds of the bank's customer and therefore the punishment can by no stretch of imagination be called as disproportionate to the charges framed.

6. I have heard both the learned counsels and I have perused the entire materials placed on record.

7. As far as the facts of the case are concerned, the same are not disputed and therefore I do not propose to replicate the facts in detail but only in so far, as they are relevant for the discussion.

8. The workman was appointed as Bankman on 23.06.1980 at the



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Thanjavur Branch of the respondent Bank and later promoted as clerk on

21.11.1993. One customer by name S.Raju had opened an account in SB account No.1366 with the respondent bank at Thanjavur branch on 13.04.1982. On 05.02.1990, the said account was closed and on the same day another account in SB account No.3403 was opened by remitting an amount of Rs.24,603/-. The customer was provided with a cheque book on 13.02.1990. On 17.07.1997, the customer deposited an amount of Rs.1,50,000/- in the aforesaid SB account and opened two cash certificates of Rs.25,000/- each for a period of five years in the name of his daughters and thereafter the said S.Raju did not visit the bank. On 17.07.2002, the said customer was intimated by the bank about the maturity of the cash certificates. On 13.02.2003, the customer issued a cheque for Rs.50,000/- and the same was dishonored for want of funds. The customer complained to the bank and on investigation it came to light that an amount of Rs.2,55,000/- was withdrawn from the customer's account on 12 different occasions by using withdrawal forms. In the investigation conducted by the bank, it was found that the workman while working in the SB section



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as clerk in collusion with one Ramakrishnan, Bankman hatched a plan and fraudulently withdrew the amount from the customer's account. The amounts were withdrawn on 12 different occasions between 28.05.1998 to 19.02.2002. It is an admitted fact that the petitioner was present on the day of the 1st withdrawal which took place on 28.05.1998, but thereafter the workman went on leave on five occasions i.e. 20.06.1998, 09.07.1998, 20.07.1998, 26.05.1999 and 12.06.1999. The workman was present while the withdrawal's took place on 05.08.2002, 20.08.2002, 24.08.2002, 02.09.2002 and 19.09.2002 as he was a cashier at that time and effected the payments. On 31.03.2003, the said Ramakrishnan issued a letter admitting the fraud and further stated that the fraud was committed by him along with the workman. Therefore a charge memo was issued on 09.05.2003 to the workman and thereafter enquiry was conducted. In the enquiry proceedings, the workman did not examine himself nor did he examine any witness on his behalf. The workman marked Ex.DE1 to Ex.DE18. The respondent examined three witnesses viz., Thambi George Simon, then Manager (Admin) Vigilance Department as MW1, K.Ramakrishnan,



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Bankman as MW2, B.R.Sridharan as MW3. The respondent marked

Ex.ME1 to Ex.ME42. The enquiry officer on the basis of the aforesaid

evidence returned a finding that the charges against the workman were

proved. On the basis of the enquiry officer's report, the workman was

dismissed from service vide the dismissal order dated 30.08.2005.

Aggrieved by the dismissal order, the petitioner raised the dispute before

the Labour Court. The Labour Court framed a preliminary issue on the

fairness of the domestic enquiry and vide impugned order dated

07.02.2020 held that the domestic enquiry was conducted in a fair and

proper manner and the same did not call for any interference. Thereafter

the Labour Court considered the dispute on merits. The Labour Court

relying on the Judgment of the Apex Court in the case of *U.P.Power*

Corporation Ltd. and another versus Lohia Brass (P) Ltd. and others reported in

2006 (7) SCC 220 and on facts confirmed the finding of the enquiry officer

and the Appellate Authority. The Labour Court on the quantum of

punishment relying on the Judgment of the Hon'ble Supreme Court in the

case of *Regional Manager, UPSRTC Vs. Hoti Lal* SCC, 614 found that the



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punishment imposed by the respondent was not disproportionate to the proved misconduct.

9. Before launching into the consideration of the rival submissions of the learned counsels, I am of the view that certain legal principles have to be borne in mind on the nature and scope of enquiry under Article 226 while reviewing the Award passed by the Labour Court.

10. Both the learned counsel relied on number of Judgments in support of their respective cases. The learned counsel for the petitioner relied on the following Judgments.

<i>S.No.</i>	<i>Citations</i>	<i>Case Names</i>	<i>Pg. No. & Paras' referred</i>
1.	AIR 1969 SC 983	Central Bank of India V. Prakasshchand Jain	Pg. 7 para 9
2.	AIR 1959 SC 1111	Phulbari Tea Estate V. Its Workmen	Pg. 18 para 5
3.	AIR 1972 SC 330	M/s. Bareilly Electricity Supply Co. Ltd. V. The Workmen and Others	Pg. 21 Para 14
4.	(1999) 2 SCC 10	Kuldeep Singh V. Commissioner of Police and others	Pg. 45 para 32



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S.No.	Citations	Case Names	Pg. No. & Paras' referred
5.	(2002) 7 SC 142	Sher Bahadur V. Union of India and others	Pg. 51 Para 7
6.	Manu/TN/0139/2007	W.P. 22574, dated 12.12.2006	Pg. 55 para 9
7.	W.P.31218/2006	P.Thangaiah V. State of Tamilnadu, Rep. by Secy. To Govt, Agriculture Department and another, dated 09.06.2009	Pg. 68 para 15
8.	(2008) 3 SCC 484	Moni Shankar V. Union of India and another	Pg. 78 para 17
9.	(2009) 2 SCC 570	Roop Singh Negi V. Punjab National Bank and others	Pg. 92 para 23
10.	(2012) IV LLJ 134 Mad	G.R.Swamy V. The President Officer	Pg. 102 para 21
11.	2007 (2) PLJR 14	Deonath Singh V. The Bihar School Examination Board and ors.	Pg. 109 para 16
12.	(2022) 13 SCC 329	United Bank of India -vs- Biswanath Bhattacharjee	Pg. 154 para's 25 onwards

The learned counsel for the respondent relied on the following judgments.

S.No.	Citations	Case Names	Pg. Nos.
1.	1977 (2) SCC 491	State of Haryana & Another V. Rattan Singh	1 to 4
2.	2006 (1) L.L.N. 379	Mahindra and Mahindra, Ltd. V. Sunil yeshwant & Anr	5 to 16
3.	1982 (1) SCC 145	J.D.Jain V. Management of State Bank of India	17 to 23
4.	1998 (4) SCC 301	Union Bank of India V. Vishwa Mohan	24 to 28



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S.No.	Citations	Case Names	Pg. Nos.
5.	2006 (7) SCC 212	State Bank of India V. Ramesh Dinkar Punde	29 to 37
6.	2006 (2) SCC 255	T.N.C.S. Corpn. Ltd. & Others V. K.Meerabai	38 to 55
7.	2011 (4) SCC 584	State Bank of Bikaner & Jaipur V. Nemi Chand Nalwaya	56 to 60
8.	Order of the High Court of Chattisgarh in W.P.No.4252 of 1997 dated 04.07.2019	Smt. Fulmati Choudhary V. Central Bank of India & others	61 to 69

11. In my view the following Judgments are relevant and hence are referred to.

In the Judgment reported in 1977 (2) SCC 491 in the case of *State of Haryana and Another vs. Rattan Singh*, the Hon'ble Supreme Court held as follows:

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian



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Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice...."

12. The Judgment of the Hon'ble Supreme Court in the case of *State of Andhra Pradesh and others Vs. S.Sree Rama Rao* reported in AIR 1963 SC 1723 the law on the scope of enquiry by the High Court under Article 226 of the Constitution of India is succinctly laid down as follows:

"7. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court



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in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution. “

13. In the Judgment of the Hon'ble Supreme Court in the case of *State Bank of India and others Versus Narendra Kumar Pandey* reported in 2013 (2) SCC 740, the Hon'ble Supreme Court relied on the aforesaid Judgment in AIR 1963 SC 1723 and held as follows:



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“25.....It is well-accepted principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice.....”

The Hon'ble Supreme Court in the case of *State Bank Of India and Others Vs. Ramesh Dinkar Punde* reported in 2006(7)SCC 212 reiterated the law on the scope of judicial review in disciplinary proceedings as follows:

“9. It is impermissible for the High Court to reappreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on records.”

14. In the back drop of the above legal principles it is to be seen if any interference is called for in the findings of the Labour Court confirming the findings of the enquiry officer. The main grievance of the petitioner is that three vital documents were not furnished to him which prejudiced his



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right to defend himself. The said three documents are as follows: i) Work allotment for the year 1998 pertaining to Thanjavur Branch, ii) Balancing schedule/ledger for concerned SB ledgers for period from 01.01.1998 to 31.05.1998, iii) Copy of domestic proceedings conducted against Shri. Ramakrishnan, Bankman. It is to be seen if any prejudice is caused to the petitioner by non-furnishing of the said documents. The enquiry officer as well as the appellate authority found that the work allotment order for the year 1998 was unavailable and so it was not produced. In any event the enquiry officer and the appellate authority held that the other evidence on record clearly established the fraud committed by the workman in collusion with Ramakrishnan.

15. It is also pertinent to note that the said Ramakrishnan was examined as witness on the side of the respondent and the workman was given ample opportunity to cross examine him. The enquiry officer in more than one place in the enquiry report stated that the petitioner had not cross examined the said Ramakrishnan on many imputations made against



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the workman like his instigation to commit the fraud, sharing of the fraudulent money and the workman having financial transactions with Ramakrishnan etc. The enquiry officer also found fault with the workman for not cross examining Ramakrishnan, on his statement that it was he who had shown him the balance of Rs.1,50,000/- lying in deposit without withdrawal for a year, when balancing was done in the year 1998 and it was only he who had given him the idea to withdraw from the account. The enquiry officer stated that the petitioner had not cross examined Ramakrishnan on the aforesaid aspects and also on any of the revelations made by Ramakrishnan in his letter implicating the workman. The relevance of the domestic proceedings conducted by the respondent bank against Ramakrishna is not established, in any event, when Ramakrishnan himself was examined and the petitioner was given opportunity to cross-examine him, I find no substance in the objection.

16. In the light of the observations of the enquiry officer, I am of the



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view that the contentions of the learned counsel for the petitioner that adverse inference should be drawn against the respondent for not producing the aforesaid three documents cannot be countenanced. When the petitioner had ample opportunity to cross examine Ramakrishnan on the various revelations made by him in implicating him in the fraud committed by both of them, the petitioner having failed to utilise the opportunity cannot cry foul at this belated stage. It is also pertinent to note that it is not disputed that the petitioner was present during the first withdrawal and thereafter as a cashier during some withdrawals. While so the petitioner ought to have grilled Ramakrishnan who implicated him. Instead the petitioner was crying hoarse on the non-furnishing of the documents which are rightly held be not so significant as to vitiate the enquiry. The aforesaid statements of the enquiry report clearly prove that the enquiry officer had applied his mind to the facts of the case and evidence on record and considered the matter in proper perspective.

17. The enquiry officer in his report has referred to the various



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documents for concluding that the charges against the petitioner were proved. At this stage, I would like to refer to one allegation of the petitioner with reference to ME40. The petitioner alleges that the document was not given in the original list and without giving copies in advance and without giving sufficient time to the petitioner to peruse and study the same the enquiry was conducted. The futile attempt of the petitioner to find fault with the enquiry proceedings can be discerned from the fact that ME40 is nothing but DE15, which is the letter dated 14.02.2003 addressed to DGM, RO/Chennai to the Branch Manager, Thanjavur. In this regard, it would be further pertinent to note here that the Hon'ble Supreme Court in the Judgment reported in 2013(2)SCC 740 held that it is not necessary that the details of the documents and the names of the witnesses should be reflected in the charge sheet. It was further stated that fair procedure does not mean giving copies of list of witnesses along with the charge sheet.

18. I am therefore of the view that the Labour Court was right in its



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finding that the enquiry officer as well as the appellate authority had considered the entire materials on record in proper perspective and thereafter held that the charges were proved. As already stated this Court exercising jurisdiction under Article 226, cannot act as a Court of appeal and reappraise the evidence and interfere with the factual findings of the enquiry office, Appellate Authority and the Labour Court, only because another view may be possible. It is trite that in enquiry proceedings, it is only the probability of the case that is more important than proof beyond doubt like in criminal cases.

19. In view of the above discussions, I find absolutely no perversity irregularity, impropriety or illegality in the findings of the enquiry officer and the appellate authority as confirmed by the labour Court and therefore the findings are confirmed.

20. The other issue is with regard to proportionality of punishment.



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It is seen that the petitioner was charged with grave misconduct of misappropriation of the bank's customer's funds. Considering the gravity of misconduct, I find absolutely no reason to interfere with the punishment imposed by the respondent. In this regard, it is pertinent to refer to the Judgment of the Hon'ble Supreme Court in the case of *Chairman and Managing Director, United Commercial Bank and others vs P.C.Kakkar* reported in 2003(4) SCC 364.

21. So also in the case of *Regional Manager, U.P.SRTC, ETAWAH and others vs. Hoti Lal and another* reported in 2003(3) SCC 605 relied on by the Labour Court it was held as follows:

“if the charged employee holds position of Trust, where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hand. Where the person deals with the public money or is engaged in financial transactions or acts in fiduciary capacity, the highest degree of integrity and trustworthiness is a must and un-exceptionable”.

22. It is seen that the petitioner in some of the impugned transactions



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acted as a cashier and misappropriated the funds of a customer. Banking business requires trust, integrity and honesty. The confidence of the public gets impaired when bank employees indulge in fraud. I am therefore of the view that the punishment imposed is commensurate with the gravity of the proved misconduct and hence the Award of the Labour Court is confirmed.

In view of the above discussions, Writ petition is dismissed. No costs.

Consequently, connected WMP is closed.

15.04.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

Central Government Industrial Tribunal-cum-Labour Court,
Chennai.



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N.MALA,J.

dsn

PRE-DELIVERY ORDER IN
W.P.No.19727 of 2022

ORDER DELIVERED ON

15.04.2024