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W.A.Nos.2636 & 2637 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.06.2024

Pronounced On : 10.07.2024

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P. DHANABAL

W.A.Nos.2636 and 2637 of 2022

G.Mathan

... Appellant/Petitioner

Versus

1.The Presiding Officer

Central Government Industrial Tribunal

Labour court, Chennai.

..R1 in W.A.2636/2022

..R2 in W.A.2637/2022

2.Assistant General Manager (Admn)

Disciplinary Authority

State Bank of India

Disciplinary Proceedings Cell

Network 2, Administrative Unit

Kurinji Complex, State Bank Road

Coimbatore 641 018

... R2 in W.A.No.2636/2022

... R1 in W.A.No.2637/2022

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, as against
the common order dated 19.04.2022 in W.P.No.28280 of 2015 & 28078/2014.



W.A.Nos.2636 & 2637 of 2022

For Appellant : Mr.Balan Haridas
For R1 : Court
For R2 : Mr.S.Ravindran, Senior counsel
for Mrs.Bazeera Hameed

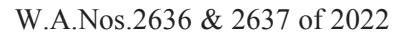
COMMON JUDGMENT

Per J.NISHA BANU, J.

The above writ appeals are filed as against the Common Order dated 19.04.2022 in W.P.No.28280 of 2015 & 28078/2014, whereby, the writ court allowed the writ petition filed by the employer-Bank against the reinstatement ordered by the Labour court and dismissed the writ petition filed by the workman challenging denial of 50% of backwages. The learned Single Judge, set aside the Award dated 21.05.2014 and remitted back the matter to the Central Government Industrial Tribunal, Labour Court, Chennai for fresh consideration. Further the learned Single Judge directed the Tribunal to conclude the proceedings within a period of three months from the date of receipt of a copy of this order.

2. The facts of the case which are necessary for the disposal of this writ appeals are as follows:-

(a) The appellant-workman joined as a Gardener in the respondent bank on 20.03.1997. Thereafter, in the year 2007, he was working as a General Attendant in the Kadathur Branch of the respondent bank. He was suspended



(d) The Tribunal held that even though in the enquiry proceedings, list of prosecution witnesses named 6 persons including the account holder and one Jaffer, Special Assistant were given, these two persons were not examined in the enquiry proceedings. The Tribunal, after analyzing the evidence of P.Ws.2, 3



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and 4, came to the conclusion that there was no evidence tendered by the bank against the appellant to prove the charge. It analysed the evidence of P.W.6, the handwriting expert and also considered Ex.W.29, the handwriting expert opinion and came to the conclusion that there is no reason to reject the expert opinion.

(e) The findings of the award by the Labour court also reads as under:-

“ 15. When the practice of the bank is taken into account it is quite probable that the Sub-Staff were filling the withdrawals forms for the customers of the bank. In the normal course, the customers who have come to the bank will be putting their signature in the withdrawal forms which will be presented at the counter by the Sub-Staff for withdrawing money. The staff will be immediately handing over the money to the customer also. So there was nothing unusual in the handwriting of the petitioner appearing in the concerned withdrawal slips, when the practice of bank is taken into account. The Forensic Expert did not say that the signature in the withdrawal slips were put by the petitioner. Of course he has stated that it is not the signature of the customer. But on this basis alone it cannot be interfered that the signature also

must have been put by the petitioner himself. The concerned vouchers do not contain any signature on the reverse side. So



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it is clear that whoever was at the Cash counter was allowing without complying with the procedure. “

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(f) The Labour Court also pointed out that in the criminal case, the court acquitted the appellant on merits. As the criminal case is also on the same facts, the tribunal held that it is bound to give the benefit of verdict of acquittal to the appellant.

(g) The Labour court found that the material available in the enquiry proceedings is not sufficient to establish that the petitioner is the one who had withdrawn amount using the withdrawal slips in question. Thus the Labour court found that there is no legal or factual basis for punishment imposed on the petitioner. The Labour court thus ordered reinstatement with 50% backwages.

3. Challenging the award of the Labour court, the bank filed W.P.No.28078 of 2014 and the appellant filed W.P.No.28280 of 2015 challenging the award to the extent of 50% backwages.

4. The learned counsel for the appellant would submit that the learned Single Judge, erroneously reappreciated the entire findings and came to the conclusion that the Tribunal erred in coming to a finding that the forensic expert



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has not stated that the signature found in the withdrawal slips belonged to the delinquent employee and therefore, the withdrawal of the money from the bank made by the delinquent employee was not proved. There is an acquittal on the same set of facts in the criminal case, however, the learned Single Judge held that the findings of the criminal court will not bind the employer and remanded back to the labour court, which is not sustainable. The charge is not established and the customer who is the best person to have been examined was not examined even though he was cited as a witness. The learned counsel for the appellant thus sought to allow the writ appeal and set aside the order of the learned Single Judge.

5. The learned counsel for the appellant relied on the following judgments:-

(i) 1985(2) LLJ 46 A.V.KRISHNAMURTHY VS.
GOVERNMENT OF TAMIL NADU AND
OTHERS.

(ii) 2009 (12) SCC 78 [UNION OF INDIA VS.
GYAN CHAND CHATTAR.

(iii) Order in W.P.No.11042 of 2007 and 2870 of
2012. [SBI VS. MADANABALAN]



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(iv) 1977 (2) SCC 210 [MAGAN BIHARI VS. STATE OF PUNJAB]

(v) 2004 (4) scc 245 [INDIAN OVERSEAS BANK VS. IOB CANTEEN WORKERS' UNION]

(vi) 2006(5) SCC 446 [GM TANK VS STATE OF GUJARAT]

(vii) 2023 SCC Online 1618::2024(1) AXX 175 [RAMLAL VS. STATE OF RAJASTAN]

Relying on the above decisions, the learned counsel would submit that even in domestic enquiry, there should be cogent evidence to establish the charge and in the absence of such cogent evidence, the findings of the Labour court need not be set aside. He would further submit that the charge of misappropriation/corruption even in disciplinary proceedings will have to be proved to the hilt. Handwriting expert opinion cannot be the sole basis for conviction and further when there is acquittal on same set of facts in criminal case, disciplinary proceedings has to be struck down.

6. The learned counsel for the appellant would further assail the order of the Labour court as well as learned Single Judge in respect of denial of 50% of backwages to the appellant stating that there was no proof submitted that the



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appellant was gainfully employed and that the appellant entered the box and deposed that he is not gainfully employed. There was no contra evidence. In such circumstances, the Tribunal erred in denying 50% backwages.

7. Per contra, the learned counsel appearing for the Respondent-Bank would submit that first of all the admitted signature and writing of customer Raja did not tally with the signature in the withdrawal form and in the domestic enquiry, the appellant admitted that the handwriting in the withdrawal form is his handwriting. Therefore, the withdrawal slips by which Rs.41,000/- was unauthorizedly withdrawn from the account of Raja. The learned counsel also submitted that the acquittal of the appellant in the criminal case is on the benefit of doubt and therefore, considering all these aspects, the learned Single Judge rightly set aside the award and remanded the matter to the Labour court for fresh consideration. The Labour court, without considering the opinion of the handwriting expert, given a perverse finding. Therefore, the learned Single Judge, has held that the finding of acquittal made by the Judicial Magistrate would have an impact on the punishment imposed in the departmental proceedings is not correct and erroneous for the reason that in criminal cases, the prosecution is burdened with proving the charges and accused has a right to maintain silence; contrary to the same, in the departmental proceedings, the



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charge sheeted employee is entitled to let in evidence, on par with the employer and cross examine the witnesses. The learned counsel would further submit that the learned Single Judge, after analysing the entire material evidence available on record, set aside the award and remitted the matter back to the Tribunal, Labour court for fresh consideration with liberty to the parties to adduce additional evidence before the Tribunal. In such circumstances, the order of the learned Single Judge need not be interfered with.

8. The learned counsel appearing for the respondent-Bank would further submit that the exercise of judicial review by the learned Single Judge is the perfect exercise done as laid down by the Supreme Court in the case reported in **2006(13) SCC 32 [State of Haryana & Ors. Vs Devi Dutt & Ors.] and 2019 (10) SCC 695 [General Manager, Electrical Rengali vs Sri Giridhari Sahu]**. The learned counsel further relied on the decisions reported in **2022(3) LLN 51 [MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS. DILIP UTTAM JAYABHAY]** and **2022 (5) LLN 462 [STATE OF RAJASTHAN AND OTHERS VS. PHOOL SINGH]** and **2013(1) SCC 675** and submitted that criminal proceedings and departmental proceedings are wholly distinct and that acquittal in criminal case would have no impact on



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disciplinary proceedings.

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9. Heard both sides and perused the records.

10. The charge against the appellant is that the appellant is the one who had withdrawn amount using the withdrawal slips in question. In the enquiry proceedings there was no evidence tendered by the bank against the appellant to prove the charge. The Tribunal, clearly held that even though the account holder and Special Assistant were witnesses, these two persons were not examined in the enquiry proceedings. Further, in the criminal case filed against the appellant, he was acquitted on merits. Since the criminal case is also on the same facts, the Tribunal, held that it is bound to give the benefit of verdict of acquittal to the appellant.

11. Further, there is no legal or factual basis for punishment imposed on the appellant. The forensic expert has not stated that the signature found in the withdrawal slips belonged to the delinquent employee and therefore the withdrawal of the money from the bank made by the delinquent employee was not proved.



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12. The above narrated facts and the findings of the Tribunal would go to show that the charge is not established against the appellant and customer who is the best person to speak about his signature, withdrawal of money, was not examined even though he was cited as a witness. in such circumstances, it is very clear that there is no cogent evidence to establish the charge and in the absence of such cogent evidence, the punishment imposed against the appellant, has been rightly set aside by the Tribunal and 50% backwages has been granted. When there is no cogent evidence, in the disciplinary proceedings, the learned Single Judge, setting aside the findings of the Tribunal, based on the handwriting expert opinion, cannot be acceptable. Even in the criminal case, on merits, after analysing the entire evidence, the criminal court acquitted the appellant. Therefore, the findings of the Tribunal cannot be said to be perverse.

13. On the above reasonings, we have no hesitation to set aside the order of the learned Single Judge. We are of the view that to meet the ends of justice, the order of the learned Single Judge in remitting the matter back to the Tribunal for fresh consideration to adduce additional evidence, is to be set aside since no useful purpose will be served in such an exercise. The Award of the Tribunal, is restored. The order of the learned Single Judge, is accordingly, set aside.



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WEB COPY 14. In the result,

(i) W.A.No. 2637 of 2022 is allowed. The order passed in W.P.No.28078 of 2014 is set aside and the Award passed by the Tribunal is restored.

(ii) W.A.No.2636 of 2022 is dismissed. In so far as the award of 50% backwages, to the appellant is concerned, taking into consideration the facts and circumstances of the case, the same is confirmed.

(iii) The respondent -State Bank of India, is directed to implement the order of the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

(J.N.B, J.) (P.D.B, J.)

10 .07.2024

nvsri

Internet : Yes /NO

Index: Yes / No

To:

1.The Presiding Officer
Central Government Industrial Tribunal



W.A.Nos.2636 & 2637 of 2022

Labour court, Chennai.

2. Assistant General Manager (Admn)

Disciplinary Authority

State Bank of India

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**J. NISHA BANU, J.
and
P.DHANABAL, J.**

nvsri

Judgment in
W.A.Nos.2636 and 2637 of 2022

10.07.2024