



WEB COPY



W.A.No.2915 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 02.04.2024

Pronounced On : 04.06.2024

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P. DHANABAL

W.A.No.2915 of 2021

E. Antonymary

Versus

... Appellant

1.Regional Manager,
State Bank of India,
(RBO III) (Disciplinary Authority),
No.25, Swamy Nelliappa High Road,
Tirunveli 627 002.

2.The Deputy General Manager,
(Business & Operations),
Appellate Authority,
State Bank of India,
Administrative Office,
Maduram Complex,
No.2, Dr. Ambedkar Road,
Madurai – 625 002.

3.The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
Shastry Bhawan, Chennai 600 006.

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, pleaded to

set aside the order dated 14.09.2021 in W.P.No.25287 of 2017 and

consequently, direct the 1st and 2nd respondent bank to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits, award costs.

For Appellant : M/s. Balan Haridas

For R1 & R2 : Mr. Anand Gopalan,

for M/s. T.S.Gopalan & Co.

For R3 : Court.

J U D G M E N T

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

This writ appeal has been preferred as against the order passed in W.P.No.25287 of 2017 dated 14.09.2021 wherein, the writ court allowed the writ petition filed by the respondent-Bank and set aside the order dated 08.08.2016 passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai.

2. The facts that are necessary for the disposal of this writ appeal is as follows:-



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(a) The appellant is working as an Assistant in Palayamkottai Branch of the respondent SBI Bank. She was charged for misappropriation of funds. The charge is that on 07.06.2007, the appellant furtively and stealthily took away Rs.10,000/- consisting of Rs.100/- note packet placed in the note counting machine. It was omitted to be carried by one Thangavel, Messenger along with 9 other note packets for Rs.90,000/- (Rs.100/- notes x 100 pieces x 9 packets) which form a bundle for payment to the Post Office.

(b) The charge would further read that the said malfeasant act caused a loss of reputation to the image and interest of the respondent bank among the Government Departments and customers.

(c) The Charge Memo dated 1.12.2007 was served to the delinquent appellant. She sent a reply by denying the charges by reply dated 27.12.2007. Thereafter, enquiry proceedings were conducted by the Disciplinary Authority.

(d) The enquiry officer found the petitioner guilty of the charges framed against the appellant. Based on the enquiry report, the Disciplinary Authority passed the order of dismissal from service by an order dated 01.12.2012.

(e) As against the dismissal order, the delinquent has preferred an appeal before



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the appellate authority. The appellate authority confirmed the order of dismissal dated 23.04.2012.

(f) In the meantime, a criminal case was also registered in C.C.No.40 of 2008 as against the delinquent officer. The said case was disposed of by acquitting the accused/appellant herein, vide Judgment dated 03.04.2014.

(g) Based on the judgment passed in C.C.No.40 of 2008, the appellant raised an industrial dispute under Section 2(A)(2) of the Industrial Disputes Act, 1947 on 21.07.2014. It was numbered as I.D.No.18 of 2015(Df) by the Central Government Industrial Tribunal – cum – Labour Court, Chennai.

3. Before the Tribunal, on the side of the petitioner/delinquent officer, no witness was examined, but Exs.W1 to W12 were marked. On the side of the respondent-bank, no witness was examined, but marked Exs.M1 to M30.

4. The Tribunal after hearing both sides, allowed I.D.18 of 2015 and held that the case CD was only for a period of 10 minutes and the delinquent sought for entire CD for that day and the same was not produced. It is also held that a lady is seen near the counting machine and taking money from the machine and going to a nearby seat; in the meanwhile, she found that she was talking with



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someone and showing the money in her hands to him. The contents of the CD come to an end with this. The Tribunal further pointed out that on the same set of allegations, the Criminal Court acquitted the delinquent holding that charges were not proved. The Industrial Tribunal on the above findings, allowed I.D.18/15 with a direction to the respondent-Bank to reinstate the employee – appellant with 50% backwages.

5. As against the said order of the Industrial Tribunal, the Bank preferred W.P.No.25287 of 2017. The Writ Court however, held that the criminal case verdict will in no way affect the departmental proceedings; charges levelled against the delinquent were proved by the respondent-bank; CD marked by the Bank is not in consonance with the provisions of Section 65(B)(4) of Indian Evidence Act; With the above said findings, the order passed by the Tribunal was set aside by the writ court. As against the order passed by the Writ Court, the present Writ Appeal has been filed by the delinquent appellant.

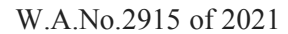
6. Learned counsel appearing for the appellant would contend that the respondent-bank mainly relied upon the CCTV camera footage; the department has produced the CD only for 10 minutes. The appellant sought for CD of CCTV footage for that entire day and the Department refused to furnish the



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same. The Criminal Court acquitted the appellant for the same set of allegations. The Industrial Tribunal, after taking into consideration the entire facts and evidence, allowed the ID and directed the Bank to reinstate the appellant into the service with 50% of backwages. But the writ court, without appreciating the evidence put forth, allowed the writ petition filed by the respondent bank which needs to be set aside.

7. Learned counsel for respondents 1 and 2-Bank would contend that the delinquent misappropriated the amount of Rs.10,000/-; when the money was counted by the messenger Thangavel, he mistakenly dropped one packet of Rs.100/- bundle in the counting machine and the same was handed over to one Ambalavanan, thereafter, he came to know about the shortage of money. When they were unable to trace out, from the CCTV footage, they came to know that the appellant had taken the said money from counting machine. The officials from the bank went to the house of the delinquent and asked about the money. At that time, she admitted the guilt and repaid the amount through a Challan dated 08.06.2007. The appellant-delinquent also admitted that she taken the money from the counting machine but the same was handed over to one Perumal, who is the Cashier. The said Perumal was examined as witness on the side of the delinquent in the enquiry proceedings. However, he did not disclose



8. The learned counsel for the respondent-bank would further submit that as far as CCTV footage for the entire day sought by the appellant is concerned, the same is not an absolute necessary. CD in respect of the said occurrence has been recorded and that has already been given to the appellant. As such, the appellant was given opportunity to put forth her case. He would further submit that charges levelled against the delinquent were proved in the Disciplinary proceedings and she was imposed with the punishment of dismissal from service. The order passed by the fact finding authority cannot be held as incorrect as it has also been confirmed by the appellate authority. The learned counsel thus submitted the order of the writ court cannot be found fault with.

10. In our considered opinion, CCTV footage in respect of the entire occurrence day has not been furnished by the respondent bank but they chosen to provide for particular time and the same creates doubt in our mind. It is the duty of the bank to give a fair and reasonable opportunity to the delinquent by



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furnishing the entire CCTV footage to prove her defence. The presumption in the findings of the writ court that the appellant had committed the mistake, is not acceptable and the said finding is liable to be set aside. Therefore, the order of the Writ Court is liable to be set aside.

11. In view of the foregoing reasonings, the Writ Appeal is allowed. The order passed by the Writ Court in W.P.No.25287 of 2017, dated 14.09.2021 is set aside. The Award passed by the Central Government Industrial Tribunal -cum- Labour Court, Chennai, in I.D.No.18 of 2015, dated 08.08.2016, is restored. The first and second respondents are directed to implement the order of the Tribunal forthwith. No costs.

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

04.06.2024

Index : Yes /No

Speaking order : Yes /No

Neutral Citation Case : Yes /No

nvsri

To

1.The Regional Manager,



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State Bank of India,
(RBO III) (Disciplinary Authority),
No.25, Swamy Nellyappa High Road,
Tirunveli 627 002.

2. The Deputy General Manager,
(Business & Operations),
Appellate Authority,
State Bank of India,
Administrative Office,
Maduram Complex,
No.2, Dr. Ambedkar Road,
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Chennai 600 006.



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

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Judgment in
W.A.No.2915 of 2021

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