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W.A.No.387 of 2024
and C.M.P.No.2582 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2024

PRONOUNCED ON : 20.12.2024

C O R A M

THE HON'BLE Mr. JUSTICE R.SUBRAMANIAN
and
THE HON'BLE Mr. JUSTICE C.KUMARAPPAN

W.A.No.387 of 2024
and
C.M.P.No.2582 of 2024

The General Manager,
Indian Bank, Zonal Office,
Chennai North, 24/21 Ethiraj Salai,
Chennai 600 008.
(Having been shifted to 5th floor
No.66, Rajaji Salai, Chennai 600 001)
Presently shifted to II florr,
Head Office
HRM Department,
254-260 Avvai Shanmugam Salai
Royapettah, Chennai 600 014.

...Appellant

Vs

1.The Presiding Officer,
Central Government Industrial
Tribunal Cum Labour Court,
I Floor, 'B' Wing, 26 Haddows Road,
Shastri Bhavan, Chennai 600 006.



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2.The General Secretary,
Indian Bank Employees' Association
17, Ameerjan Street,
Choolaimedu,
Chennai 600 094.

...Respondents

Prayer: Writ Appeal preferred under Clause 15 of the Letters Patent, against the order dated 24.07.2023 passed in W.P.No.27584 of 2016.

For Petitioner : Mr.P.Ragunathan
for Mr.T.S.Gopalan & Co.
For Respondents : Mr.Balan Haridas

JUDGMENT

(Judgment of the Court was delivered by **C.KUMARAPPAN, J.**)

The instant Writ Appeal has been filed assailing the order of the learned Single Judge dated 24.07.2023, confirming the order of the Tribunal imposing the punishment of compulsory retirement.

2.The brief facts which are necessary for the effective disposal of this appeal is that, the appellant herein was the petitioner before writ Court (hereinafter called as Management). The 2nd respondent/Labour Union is the petitioner before writ Court, who espoused the cause of the workmen one Mr.Manoharan (hereinafter called as employee). The employee joined in the



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respondent Bank (employer) as a Sub-Staff during 1980. After a period of 14 years, he was promoted as clerk. In the course of his employment, he was posted as Single Window Operator/Cashier at Red Hills Branch, during 2005. While he was serving there, he was served with a charge memorandum dated 09.12.2009, by and in which, he was charged for mis-appropriation of a sum of Rs.3,500/- on 12.06.2009, and a sum of Rs.13,000/- on 19.06.2008. Subsequently an enquiry was conducted and in the enquiry, the employee admitted his guilt. Based upon his admission, the employee was found guilty. After the receipt of the enquiry report, and after complying due procedure, the employee was dismissed from service vide order dated 06.08.2010.

3.After that, the 2nd respondent union raised an industrial dispute before the Central Government Industrial Tribunal cum Labour Court, Chennai. The Tribunal after having gone through the oral and documentary evidence, has concurred with the finding of the Enquiry Officer. However, modified the punishment of dismissal, to compulsory retirement. Aggrieved with such modification of punishment, the Management filed a writ petition, wherein the learned Single Judge confirmed the order of the Tribunal. Aggrieved by the same, the instant Writ Appeal has been filed.



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4. We have heard Mr. Anand Gopalan, for Mr. T.S. Gopalan & Co., learned counsel appearing for the appellant, and Mr. Balan Haridas, learned counsel appearing for the 2nd respondent.

5. The learned counsel appearing for the Management would vehemently submit that, the Labour Court having concurred with the finding of the Enquiry Officer, it ought not have interfered with the punishment, as the imposition of punishment is an administrative function and would come within their exclusive domain. It is his further submission that the charge of misappropriation has been proved, and such misappropriation had to be dealt with higher degree of sensitivity, where the public at large had reposed great faith in the banking institution. To buttress his submission he relied upon the following judgments:- (i) **Janatha Bazar (South Kanara Central Co-operative Wholedale Stores Ltd.)** reported in (2000) 7 SCC 517; (ii) **State Bank of India and Another Vs. Bela Bagchi and Others** reported in (2005) 7 SCC 435; (iii) **State Bank of India Vs. Chaman Lal** reported in 2008 SCC Online Del 736; (iv) **Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain** reported in (2005) 10 SCC 84; (v) **LIC of India Vs. R. Dhandapani** reported in (2006) 13 SCC 613; (vi) **Disciplinary**



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Authority-Cum-Regional Manager Vs.Nikunja Bihari Patnaik reported in **(1996) 9 SCC 69**; (vii)**Kerala Solvent Extractions Ltd., Vs.A.Unnikrishnan** reported in **(2006) 13 SCC 619**.

6.Contending contra, Mr.Balan Haridas would submit that, though the imposition of punishment would come within the administrative domain and had got discretion to impose punishment, if the Labour Court found any disproportionality of punishment, shocking it's conscience, then the Tribunal has power to interfere with the punishment under Section 11 (A) of the Industrial Tribunal Act, and to buttress his submissions he relied upon the oft quoted judgment of the Hon'ble Supreme Court in the case of ***Workman Vs. Firestone Tyre*** reported in **1973 (1) SCC 813**. He would further contend that, though the charge of mis-appropriation is a gross misconduct, according to the bipartite settlement, it is mandatory on the part of the employer to look into the previous record, and other aggravating or extenuating circumstances. He would further contend that according to the bipartite settlement, if any employee found to be guilty of gross mis-conduct, he may be awarded to the maximum punishment of dismissal, and minimum punishment of fine, whereas, Authorities did not refer the reason, as to why the maximum punishment was



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imposed. He would also further contend that, they ignored the past records, and other extenuating circumstances, before imposing punishment. He would further contend that considering his 30 years service, the punishment of dismissal is shockingly disproportionate. As such the counsel for the employee contended that the interference in quantum of punishment by the Tribunal is well within the contours of law. Hence, he prayed for dismissal of the present appeal.

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

8. From the submission of the either side, the only issue to be addressed is, as to whether the modification of punishment, by the Tribunal is, justifiable, or not? As we already stated, the finding of the Enquiry Officer rests upon the admission made by the employee. Before the Appellate Authority, considering his long service from the post of temporary sub-staff, he pleaded for lenience. As a matter of fact from very inception of the disciplinary proceeding, the employee's openness to the truth is overwhelming and he did not try to cover up the lapses. His only defense is that, it was an inadvertent mistake, as he was manning the busy single window counter which, resulted in his failure to account



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the amount immediately. However, the Disciplinary Authority and the Appellate Authority did not accept such defense, and found that it was a deliberate mis-appropriation.

9.At this juncture, the learned counsel for the appellant would contend that there are line of judgments to the effect that, when a Bank employee commits a mis-appropriation, it has to be dealt with iron hands. Absolutely we are in full agreement with the submissions made by the learned counsel appearing for the Bank.

10.But here the issue is, when the bipartite agreement dated 10.04.2002, mandates the Disciplinary Authority as well as the Appellate Authority to consider the previous records, and aggravating and extenuating circumstances, we must see, whether such exercise was undertaken by the Authorities. While reading the orders of the Disciplinary Authority and the Appellate Authority, this Court could not find any traces of consideration in this regard. Only in such a background, the Tribunal got into the proportionality of the punishment. On a wholesome reading of the order of the Tribunal, the reason for modification is on two folds. One is at the time of imposition of punishment the employee was



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57 years old, and the second is, the 2nd charge of misappropriation was initially closed, and only on account of subsequent complaint, the said charge was re-opened.

11.From the above reasoning what would emerges is, he joined at lower level post and through the letter of promotion after a period of more than three decades he reached the present post. Further, it is apparent that he had no motive to cover up his lapses. We must visualize the conduct of the employee only in the above background. The age of the petitioner, and his long service in the Bank, and his initial joining as Sub-Staff would manifest his level of understanding to the seriousness of the procedure. He rose from ranks. He should not be dealt at par like person who had opulence of wisdom and efficiency. The above extenuating circumstance has not been considered by the Appellate Authority. It is the well settled principle of law that while exercising the power under Section 11 (A) of the Industrial Tribunal Act, the Labour Court has got power to modify the punishment and this position has been settled in **Fire Stone Case** (*cited supra*).



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12.At this juncture, the learned counsel for the respondent relied upon the case reported in *(2009) 12 SCC 267* in the case of ***D.M.Premkumari Vs.Divisional Commissioner, Mysore***, wherein, the Hon'ble Supreme Court eloquently explained that, many a times people mistakenly think that the Courts are separated from the feelings and righteousness; There is also general misunderstanding that the Court should not express such emotions of indignation, sorrow and compassion, but the reality is that the judiciary has very strong sense of justice and it works to maintain social justice and fairness. The above proposition squarely applies to the above set of facts, and the Tribunal and learned Single Judge had rightly permeated the above principle to the present case.

13.In the present case the bipartite settlement provides maximum punishment of dismissal and minimum punishment of fine to the misconduct classified as major. The present charge comes within the ambit of major misconduct. As already stated there are no reasons as to why maximum punishment of dismissal was imposed. This lapse assumes significance in the backdrop of the diligent long unblemish service and his conduct of not hiding the error. In a writ jurisdiction, this Court will generally interfere only when the



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order is perverse. In this regard, it is appropriate to extract the expression

“perverse” defined by various dictionaries:-

a.Oxford Advanced Learner's Dictionary of Current English, 6th Ed.

Perverse – Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b.Longman Dictionary of Contemporary English – International Edition

Perverse – Deliberately departing from what is normal and reasonable.

c.The New Oxford Dictionary of English – 1998 Edition

Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d.New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)

Perverse – Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

e.Stroud's Judicial Dictionary of Words & Phrases, 4th Ed.

Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.”

14.In view of the above expression to the word Perverse, the reason assigned by the Tribunal, could not be termed as perverse and it's view is quite plausible. In the light of the above discussion, the findings of the Tribunal are well merited.



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15. Accordingly, the instant writ appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

(R.S.M.J.) (C.K.J.)

20.12.2024

Index: Yes
Internet: Yes
Speaking order
rst

To

1. The Presiding Officer,
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Tribunal Cum Labour Court,
I Floor, 'B' Wing, 26 Haddows Road,
Shastri Bhavan, Chennai 600 006.

2. The General Secretary,
Indian Bank Employees' Association
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Pre-Delivery Judgment in
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