



W.P. No.10221/2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.02.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.10221 OF 2012

AND

M.P. NO. 1 OF 2012

Indian Bank

Rep. By General Manager (HR)

2nd Floor, 254-260, Avvai Shanmugam Salai

Royapettah, Chennai 600 014.

.. Petitioner

- Vs -

1. The General Secretary

Indian Bank Employees Association

17, Ameerjan Street

Choolaimedu, Chennai 600 094.

2. The Central Government Industrial Tribunal

-cum- Labour Court

First Floor, 'B' Wing

26, Haddows Road

Shastri Bhavan, Chennai 600 006.

.. Respondents



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WEB COPY Writ Petition filed under Article 226 of the Constitution of India praying

this Court to issue a writ of certiorari to call for the records pertaining to the award dated 23.12.2011 passed in I.D. No.23 of 2010 on the file of the 2nd respondent and quash the award insofar as it substitutes the punishment of dismissal imposed by the Bank with the punishment of compulsory retirement.

For Petitioner : Ms. Rita Chandrasekaran, for
M/s.Aiyar & Dolia

For Respondents : Mr. V.Ajay Khose for R-1

ORDER

Assailing the order of the 2nd respondent in and by which the punishment imposed on the workman by disciplinary authority has been modified from one of dismissal from service into compulsory retirement the present petition has been filed.

2. It is the case of the petitioner that the workman, while working as Agricultural Assistant, had without authority, upon receipt of amounts with regard to certain loans taken by the individuals, had returned the signed



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counterfoil, without it being authenticated and also failed to credit the amount so received on the said counterfoil to the credit of the respective loan accounts. It is further averred that when this came to the light of the petitioner Bank, to wriggle out of the same, the workman had approached certain persons to pacify the persons, whose accounts were mishandled by the workman. It is the further averment of the petitioner that the workman had opened loan accounts in the names of certain individuals and availed loan in the name of M/s.Sri Gayathri Home Appliances for the purpose of purchase of household items under the GMS scheme while the said individuals neither received the loans nor the household articles and investigation further revealed that the workman had encashed the drafts on 20.07.2002 and, thereby, misused his official position and misappropriated the amounts in the name of the public.

3. It is the further averment of the petitioner that for the aforesaid acts, enquiry was initiated against the workman, but the allegations levelled against the petitioner were held to be not proved in the enquiry. It is the further case of the petitioner that the Disciplinary Authority not accepting the report with regard



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to the charges not being proved, sought to impose punishment on the workman for the said acts and by proceedings dated 25.9.2006, the workman was imposed with punishment of dismissal from service. Against the said order, the workman filed an appeal before the appellate authority, which was rejected confirming the order of dismissal. Aggrieved by the same, on behalf of the workman, dispute was raised before the Tribunal by the 1st respondent/Union.

4. Before the Tribunal, while no oral evidence was tendered on the side of the workman as well as the Bank, on the side of the workman, Exs.W-1 to W-12 were marked and on the said of the Bank, documents Exs.M-1 to M-58 were marked. The Tribunal, on consideration of the documentary evidence held that the charges against the workman are based on materials, which probabilises the act of the workman and, therefore, found no reason to interfere with the finding of guilt as held by the disciplinary authority, however, on the basis of the explanation submitted by the workman to the disciplinary authority touching upon the stigma that has befallen on him as also his family members and the scar that it had created on his family as also the future education of his children,



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taking a lenient view, interfered with the punishment by modifying the punishment from dismissal to one of compulsory retirement so as to enable the workman to receive his terminal benefits. Aggrieved by the said order, the present writ petition has been filed by the Bank.

5. Learned counsel appearing for the Bank submitted that when the Tribunal had found the delinquent guilty of the charges levelled against him and has rendered a finding to the said effect, which has not been challenged by the workman before this Court, the Tribunal ought not have modified the punishment imposed on the workman by the disciplinary authority being carried away by sympathy, considering the nature of delinquency committed by the workman.

6. It is the further submission of the learned counsel that the employer was a Bank and any dishonesty perpetrated by its employee would have a direct bearing on the public, who had reposed confidence on the bank and invested their hard earned money and the said money being siphoned off by unscrupulous



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persons like the petitioner, definitely the same ought to be viewed seriously and considering the gravity of the offence, the disciplinary authority as well as the appellate authority have imposed the punishment of dismissal from service. When the Tribunal has endorsed the findings, it ought not have interfered with the punishment imposed on the workman.

7. It is the further submission of the learned counsel that when the workman had acted prejudicial to the interest of the bank and when the documents reveal his culpability in committing the offence, which has even been accepted by the Tribunal as having been proved, necessarily the dishonesty committed by the workman should be the main consideration on which punishment is to be gauged and irrespective of the 23 years of service rendered by the workman, the delinquency cannot be merely brushed aside as the misconduct is of such a proportion that giving any leniency would send a wrong signal to the other employees that they could walk scot-free even after committing such a serious offence.



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8. In support of the aforesaid submissions, learned counsel appearing for the petitioner placed reliance on the following decisions :-

- i) *Deputy General Manager (Appellate Authority) & Ors. – Vs – Ajai Kumar Srivastava (2021 (2) SCC 612);*
- ii) *The General Manager Personnel, Syndicate Bank & Ors. – Vs – B.S.N.Prasad (C.A. No.6327/2024 – Dated 21.01.2025); and*
- iii) *The Managing Director & Ors. – Vs – Palaniappan (W.A. No.2541/2021 – Dated 27.09.2024)*

9. Per contra, learned counsel appearing for the 1st respondent submitted that the Tribunal, though had concurred with the findings recorded with regard to the delinquency of the workman, as a benevolent gesture upon being satisfying itself that the workman had realised his mistake and only wanted to safeguard his family from being stigmatised and also considering the future of the children and the family, had modified the punishment to one of compulsory retirement so that the family would not suffer the ignominy of the act of the workman and at the same time would be able to sustain itself. The said order of the Tribunal being passed in exercise of its powers u/s 11-A of the Industrial



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Disputes Act, the same does not warrant any interference and, accordingly, prayed for dismissal of the present writ petition

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on by the learned counsel for the parties.

11. There is no dispute with regard to the facts and even with regard to the delinquency, the workman had admitted his guilt, though not before the enquiry officer, but by way of his explanation before the Disciplinary Authority, which has resulted in the workman being dismissed from service. The leniency sought for by the workman in his punishment had not been granted by the disciplinary authority, which has since been modified by the Tribunal.

12. It is the settled legal position that insofar as departmental proceedings is concerned, the appreciation of evidence is based on preponderance of probability and not in the manner in which evidence is appraised during a



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criminal prosecution. The enquiry authority has satisfied himself with regard to the materials placed before it and the appellate authority as also the Tribunal have appreciated the enquiry report and accepted that the enquiry has been conducted in a fair and proper manner. In fact, the Tribunal has held that the misconduct cannot be assailed to be perverse as it has been rendered on legal evidence and that there is no question of adequacy of evidence.

13. In the above backdrop, it is to be pointed out that this Court, sitting under Article 226 of the Constitution in a matter of judicial review, cannot reappreciate the evidence as a court of first instance or appellate authority. The duty of this Court is only to see as to whether the enquiry has been fair and proper and that the enquiry has been conducted in consonance with principles of natural justice.

14. A perusal of the order passed by the Tribunal reveals that the Tribunal, on proper appreciation of the materials placed before it has held that the evidence unerringly point to the misconduct of the workman and, therefore, had



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refrained from interfering with the said finding rendered by the enquiry officer.

In the aforesaid scenario, this Court, sitting in judicial review, is not inclined to interfere with the said finding, so long as it is not perverse and it is in consonance with the principles of natural justice.

15. Now the only question that requires the determination of this Court is whether the modification of punishment by the Tribunal is warranted in the case on hand.

16. A careful perusal of the order passed by the disciplinary authority, which has been affirmed by the appellate authority reveals that upon proper appreciation, the disciplinary authority has imposed the punishment of dismissal from service on the workman. The issue that weighed with the disciplinary authority to impose the extreme punishment was necessitated not only by the dishonest act of the workman, but also by relying upon the duties of the workman, which is a public duty in which probity and honesty is of utmost importance as the workman is entrusted with the task of handling public money.



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17. The proportionality of the punishment inflicted on the delinquent had been considered by the Apex Court in **V.S.P. – Vs - Goparaju Sri Prabhakara Hari Babu (2008 (5) SCC 569)**, and it was held as under:-

“12. While answering the aforesaid question/issue, the decision of this Court in the case of Goparaju Sri Prabhakara Hari Babu (supra), on the judicial review and the limited jurisdiction of the High Court on the proportionality of the order of departmental authority is required to be referred to. In the said decision, after referring to a catena of judgments of this Court, it is observed and held by this Court that the jurisdiction of the High Court on the proportionality of the order of departmental authority is limited. It is observed that it cannot set aside a well-reasoned order only on grounds of sympathy and sentiments. It is further observed and held that once it is found that all the procedural requirements had been complied with, courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. It is further observed that the superior courts, only in some cases may invoke the doctrine of proportionality, however if the decision of an employer is found to be within the legal parameters, the doctrine would ordinarily not be invoked when the misconduct stands proved.”



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18. The precedents on the issue of interference with the punishment imposed has been oft considered by the Courts and it has been the consistent view of the Courts that it is always within the domain of the disciplinary authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Article 226. In ***Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)***, the Supreme Court held as under :-

“20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.”

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major)



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then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)

19. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.



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20. There could be no quarrel with the fact that the petitioner being in public employment is supposed to exhibit utmost sincerity and honesty as it involves public money. When the petitioner has misappropriated amounts by retaining the amounts, which were deposited by the customers and also opening loan accounts in the name of the customers without their knowledge and misappropriating the said amounts, the delinquency is not only grave, but it strikes at the honesty of the workman, who is entrusted with the task of handling public money. Benevolence cannot form the basis to show leniency to the workman when the delinquency committed by the workman strikes at the trust imposed on him by not only by the petitioner, but also by the public through the petitioner.

21. True it is that the workman has put in about 23 years of service, but that cannot be the basis to shower leniency on the workman as showing any such leniency will send a wrong signal to the entire work force under the petitioner and would only act as a catalyst to other persons to follow the footsteps of the



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workman. Misplaced sympathy cannot be entertained as it would only result in mushrooming of illegal acts such as the one done by the workman. When the workman pleads through his explanation before the Tribunal by showcasing his family and his children before the eyes of the Tribunal, before doing acts of misappropriation, the same family and children should have passed through the eyes of the workman, in which case the workman would not have committed the said acts. When the workman, without even thinking about the welfare of his family and his children had committed the aforesaid acts, the leniency showed by the Tribunal could only be termed to be misplaced sympathy, which has resulted in the modification of punishment.

22. In the aforesaid circumstances, the Tribunal ought not have taken into consideration the length of service of the workman for deciding the punishment by exercising its power u/s 11-A of the Industrial Disputes Act, which is nothing but a wrongful exercise of power, without proper application of mind. Invocation of power u/s 11-A ought to be utilised only where the Tribunal is satisfied that the order of dismissal was not justified, but is not to be exercised under the guise



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of benevolence and sympathy, as has been done in the present case. Therefore, the exercise of power by the Tribunal u/s 11-A is grossly unsustainable as it is misplaced sympathy, which has resulted in the faulty exercise. Therefore, this Court has no hesitation to hold that the interference with the punishment awarded by the Disciplinary Authority is unsustainable and the same requires to be interfered with.

23. For the reasons aforesaid, this writ petition deserves to be allowed and, accordingly, the same is allowed by setting aside the impugned order in and by which modification in punishment was ordered by the Tribunal and this Court restores the order of dismissal passed by the Disciplinary Authority as confirmed by the Appellate Authority. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes / No

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To

The Presiding Officer
Central Government Industrial Tribunal
-cum- Labour Court
1st Floor, 'B' Wing
26, Haddows Road, Shastri Bhavan
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M.DHANDAPANI, J.

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