



W.P. No.11760/2012

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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.11760 OF 2012

The Karur Vysya Bank Ltd.
Central Office, Erode Road
Choolaimedu, Karur 639 002
Rep. By its General Manager

.. Petitioner

- Vs -

1. The Presiding Officer
Central Government Industrial Tribunal
-cum- Labour Court
26, Haddows Road
Shastri Bhavan, Chennai 600 086.

2. The General Secretary
Karur Vysys Bank Employees Union
C/o Karur Vysya Bank Ltd. Staff Co-op.
Thrift & Credit Society Ltd.
No.5, 4th Street, Sourashtra Nagar
Choolaimedu, Chennai – 94.

.. 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 relating to the award dated 16.01.2012 passed by the 1st respondent in I.D. No.6 of 2008 and quash the same.

For Petitioner : Mr. R.Jayaprakash

For Respondents : Mr.V.Ajay Khose for R-2

ORDER

Assailing the order of the 1st respondent in and by which the punishment of dismissal from service imposed on the workman was set aside, the present petition has been filed.

2. It is the case of the petitioner that the workman, Madeswaran, a sub-staff under the employ of the petitioner was one among the 5 packers working in the Stationery Department, Central Office, Karur. With regard to the purchase and settlement of bills relating to the stationery, fraud was alleged to have been perpetrated by the workman in connivance with two other employees of the



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Bank, which had come to light during the inspection on 3.6.2002, which caused loss to the bank to the tune of Rs.36.74 Lakhs. After issuance of show cause notice, upon receipt of explanation, not being satisfied with the explanation, enquiry was conducted in which a finding was given holding the charges against the workman proved resulting in the disciplinary authority passing the order dismissing the workman from service on 12.10.2006. Against the order of dismissal, the workman preferred appeal before the appellate authority and the appellate authority dismissed the appeal confirming the punishment imposed. Aggrieved by the same, on behalf of the workman, dispute was raised before the Tribunal by the 2nd respondent/Union.

3. 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 Bank, documents Exs.M-1 to M-63 were marked, while no documents were marked on behalf of the workman. The Tribunal, on consideration of the documentary evidence held that though the charges proved against the workman are found proved, however, felt that the punishment imposed is shockingly disproportionate and it requires to be



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modified and, accordingly, directed reinstatement of the workman along with 50% backwages and all other attendant benefits, directed the bank to issue a warning to the workman that such misconducts in future and if at all the Bank wants to impose any punishment, it may inflict punishment of stoppage of increment with cumulative effect for a period not exceeding one year. Aggrieved by the said order, the present writ petition has been filed by the Bank.

4. 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 reinstated the workman in service, considering the nature of delinquency committed by the workman.

5. 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.

6. It is the further submission of the learned counsel that even the Bipartite Settlement, more particularly Clause 12 (c) therein, permits the employer to terminate the services of an employee considering the gravity of the offence even if the charges are not established, however, without properly appreciating the above and also the nature of business carried on by the petitioner, the Tribunal had ordered reinstatement, which order required interference as it is grossly perverse, arbitrary and unreasonable.

7. Per contra, learned counsel appearing for the 2nd respondent submitted that this Court, in exercise of its power of judicial review ought not interfere with the award passed by the Tribunal, as the Tribunal has considered the fact that the



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workman is a lowly paid servant, while the persons, who had authorised the payment are higher up in the hierarchy and no action has been taken against them and, therefore, inflicting punishment against the workman alone is not justifiable and, therefore, had interfered with the punishment, by even giving a choice to the Bank to inflict lesser punishment if it so desires. The order being a balanced one, this Court may not interfere with the same and, accordingly, prayed for dismissal of the petition.

8. 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.

9. It is not in dispute that in the enquiry, the workman was found guilty of the charges and punishment of dismissal from service was imposed upon him by the disciplinary authority, which was confirmed by the appellate authority. However, in the dispute raised by the Union on behalf of the workman, the Tribunal, while sided with the Bank with regard to the findings recorded in the



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enquiry and endorsed the findings, holding that the guilt against the workman stood proved, however, made a tangential turn and held that the punishment is not only disproportionate, but ordered reinstatement of the workman with 50% backwages and all other attendant benefits. Curiously, the Tribunal gave the Bank a direction that if at all it decides to inflict any punishment, punishment of stoppage of one increment with cumulative effect alone be imposed.

10. This Court is unable to reconcile itself with the findings and the consequential direction issued by the Tribunal. If really the Tribunal had felt that the findings recorded at the enquiry are just and reasonable, but found that the punishment imposed was disproportionate, the Tribunal ought to have modified the punishment and it should not have reinstated the workman in service by relegating the issue with regard to punishment to be determined by the Bank and at the same time implying as to what the punishment that is to be imposed. The exercise undertaken by the Tribunal is grossly erroneous and the same does not have the stamp of approval of this Court.



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11. Be that as it may. The findings of the Tribunal with regard to the guilt, which has been fastened on the workman and which has held to be proved and approved by the Tribunal has not been challenged by the workman and, therefore, the same has attained finality. As aforesaid, when once the finding of guilt is approved and accepted even by the workman, necessarily it follows that the Tribunal ought to have decided on the punishment that is to be imposed on the workman and it ought not have reinstated the workman in service by relegating the punishment to be imposed by the Bank and at the same time directing as to what should be the punishment that is to be imposed. The punishment is to be guided on the basis of proportionality to the delinquency.

12. In the above backdrop, the only issue that requires the consideration of this Court is the proportionality of the punishment that could be imposed with reference to the delinquency committed by the petitioner.



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13. 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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14. 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) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the



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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)

15. 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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16. There could be no quarrel with the fact that the misconduct of the workman is grave in nature, which has been held to be proved and even endorsed by the Tribunal. However, it should not be lost sight of that the workman is in the lower most position in the organisational hierarchy and he alone cannot be said to have committed the offence, without the connivance of his superiors. However, no action has been taken against his superiors. In the aforesaid factual position, punishment of dismissal from service imposed by disciplinary authority is definitely excessive, but at the same stretch, the reinstatement of the petitioner without imposing any punishment, more so, when the delinquency stood proved and endorsed, is a too lenient act, which cannot be allowed to withstand. In such view of the matter, this Court feels that imposition of punishment of stoppage of increment for a period of five years with cumulative effect would be a just and reasonable and substantial punishment, which could be imposed on the workman, which would not only subserve the cause of justice, but would also be balanced justice insofar as the Bank and the workman are concerned..



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17. In the result, for the reasons aforesaid, this writ petition is allowed in part by setting aside the order of reinstatement simpliciter passed by the Tribunal and instead the said order stands modified by modifying the punishment imposed on the workman by the Bank to one of stoppage of increment for a period of five years with cumulative effect. It is further made clear that the workman would not be entitled for backwages during the period of his absence from work, but would be entitled for continuity of service and other retiral benefits. There shall be no order as to costs.

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M.DHANDAPANI, J.

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