



W.P.No.28108 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.28108 of 2010

and

M.P.No.1 of 2015

J.Jacob Selvam

... Petitioner

Vs.

1. Central Government Industrial Tribunal
cum- Labour Court,
Rep.by its Presiding Officer
I Floor, 'B' Wing No.26, Haddows Road
Shastri Bhavan
Chennai 600 006.

2. The General Manager (IED)
Indian Bank
Personnel Department
Head Office, No.66, Rajaji Salai
Chennai 600 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorarified Mandamus, after calling for the concerned



W.P.No.28108 of 2010

records from the first respondent, quash the award dated 15.12.2009 passed by the first respondent Tribunal in I.D.No.79 of 2007 and consequently direct the second respondent Bank to reinstate the petitioner in service with full backwages, continuity of service and all other attendant benefits, award cost and render justice.

For Petitioner : Mr.D.Muthukumar

For Respondents : R1 – Notice served
Mrs.Rita Chandrasekar for R2
for M/s.AIYAR & DOLIA

ORDER

This Writ Petition is filed challenging the award of the Central Industrial Tribunal/Labour Court, Chennai dated 15.12.2009 in I.D. No.79 of 2007. By the said award, the claim petition preferred by the workman was dismissed.

2. By an order dated 28.11.2007, the Government of India referred the following question for adjudication :



“Whether the action of the management of Indian Bank in imposing the punishment of ‘dismissal without notice’ on *Shri. J. Jacob Selvam* is legal and justified? If not, to what relief is the workman entitled?”

3. The workman filed a claim petition. It is his case that he was appointed as a Clerk/Shroff on 13.06.1990 under sports quota. While so, he was placed under suspension on 25.07.2002 when he was working at Egmore Branch. Explanation was called for from the petitioner on 29.11.2002 for certain allegations as regards fraudulent withdrawal, fraudulent authorisation of vouchers, signing of pay-in-slip as customer etc. It is also referred that the workman had accepted his guilt on his own volition by his letter dated 24.07.2002. The workman prayed for time to submit his explanation as there was some delay in the Union assisting him, but the disciplinary authority chose to conduct enquiry. The enquiry officer conducted enquiry from 05.05.2003 to 16.07.2003 and it was held that the charges were proved. Without considering the further explanation submitted by the petitioner, in a prejudged manner, a final order of dismissal was passed on 27.03.2004.

4. Challenging the said order, the workman filed an appeal,



W.P.No.28108 of 2010

however, the appeal was also dismissed on 22.02.2005. There are serious violations in the enquiry conducted by the bank. The admission letters were given under duress and tremendous pressure. It is clear that during the enquiry, it transpired that the workman would be involved, immediately the manager and others rushed to the house of the workman created a fear psychosis of severe police action. The various shortcomings in the enquiry and the evidence were also pointed out. Therefore, it was prayed that the punishment should be set aside and reinstatement with back wages should be ordered.

5. The claim was resisted by the management. One *Mr.M.Abdul Wahab* was having NRE SB Account No.12034 and as on 02.02.2002, there was a balance of Rs.5,75,380.95. He was also having NIR/RIP for Rs.24,95,500/- which had matured on 04.04.1988. His legal heirs submitted a claim which was forwarded by the *Egmore* Branch to its legal department on 22.06.2002 for clearance. The legal department cleared the title of the legal heirs. On 22.07.2002, when they called the branch, the manager found that there was fraudulent withdrawal and only Rs.550.70 was remaining as



W.P.No.28108 of 2010

balance. By means of cheques between 17.03.2002 and 03.05.2002, the amounts were withdrawn. On verification of the cheque book register, it was further observed that the cheque book contained 20 leaves which were entered in the cheque book register on 14.03.2002.

6. On 23.07.2002, when the fraud was reported to the Circle Office *Mr.K.Viswanathan*, the Senior Manager/Investigating Officer, carried out investigation on 23.07.2002, 24.07.2002 and 25.07.2002. When the cheques were verified, it showed that they were all drawn by a single person who was having the habit of making a dot after every writing in a particular manner. While observing the pattern in which the cheques were filled up by comparing the handwriting of the various staff, it was suspected that the Workman was involved in the episode. When the Workman was confronted, he admitted his guilt and on 25.07.2002 he remitted a sum of Rs.20,000/- he assured to pay the balance amount in due course. Between 25.07.2002 and 02.08.2002 the workman had made good the loss by remitting the amounts on various dates totalling a sum of Rs.5,75,380.95/-. By another letter dated 06.08.2002, he also requested that the amount may be appropriated towards



W.P.No.28108 of 2010

the amount wrongly withdrawn by him from the above said SB Account of

Mr.Abdul Wahab. Thereafter, on 29.11.2002 the petitioner was issued a Charge Memorandum. On 29.01.2003, the Workman gave a reply that he was made scapegoat for unauthorised withdrawal from the SB Account of *Mr.Abdul Wahab*. As the reply was not satisfactory, he was directed to appear for enquiry. In the enquiry as many as 14 witnesses were examined and 65 documents were marked as exhibits. On 30.10.2003, the Enquiry Officer gave his report holding that all the charges against the workman were proved. A second show cause notice was issued on 21.11.2003. The delinquent workman was permitted to give his further explanation on 06.12.2003. Thereafter, a further show cause notice was issued with regard to the proposed punishment and personal hearing was also given. He also gave a further reply and after personally hearing of the delinquent, the order of dismissal was passed. The delinquent also preferred an appeal and the appeal was also dismissed on 22.02.2005. It is further denied that there was any duress or threat during the course of the domestic enquiry or when he gave statements admitting the guilt and repaid the amount.



W.P.No.28108 of 2010

7. With the said pleadings, when the Labour Court took up the matter for enquiry, both sides did not let in oral evidence and the documents were marked by consent. On behalf of the Workman *Ex.W.1* to *Ex.W.35* were marked. On behalf of the management *Ex.M.1* to *Ex.M.50* were marked. The Labour Court then considered the case of the parties and found that when the Workman has categorically admitted his guilt and paid the amount wrongfully withdrawn by him then that clinches the issue of withdrawing the amount from a customer account by forging the signature etc. However, considering the overall circumstances, the labour court altered punishment into one of discharge from service. Aggrieved thereby, the present Writ Petition is filed.

8. Heard *Mr. D.Muthukumar*, learned counsel appearing on behalf of the Workman and *Mrs.Rita Chandrasekar*, learned counsel appearing on behalf of the Management.

9. The learned counsel appearing on behalf of the workman taking this Court through the typed set of papers and the award of the Labour Court would firstly submit that on a careful perusal of the entire records and



W.P.No.28108 of 2010

the enquiry, it can be seen that other than the alleged confession of the Workman, there is no other evidence pointing out towards the guilt. Taking through the various documents and the statements that are made in the cross examination, the learned counsel would submit that the entire episode proceeded as follows. Initially, there was a suspicion that the present Workman would have been involved and therefore, the manager and all the officials descended to the home of the Workman and they put pressure on the family members as if immediately a criminal case will be filed and the Workman will be arrested and only fearing the said social stigma, the Workman had given way. As a matter of fact, the sum involved is a huge sum. The manner in which the sums are paid on various dates by various relatives of the workman would itself demonstrate that the entire family pitched in to save the workman. Therefore, that does not in any manner point out as if the workman wholeheartedly accepted his guilt and paid the entire amount. This apart, he would submit that the higher official namely, the Chief Circle Manager, who made the enquiry namely *Mr.K.Viswanathan* though suspected the petitioner initially on the day of enquiry, in the course of the domestic



W.P.No.28108 of 2010

enquiry has categorically disowned his knowledge about the petitioner's handwriting in the incriminating documents.

10. Admittedly, no criminal complaint was given and no further enquiry was made to find out who has forged the signatures or who has done all the mischief. By specifically pointing out to a document whereby even a post dated cheque has been honoured by yet another employee two days before the date of the cheque, the learned counsel would submit that many other persons are involved in the entire episode and only to find scapegoat the petitioner was a convenient target. Therefore, the entire episode is intended in not to find out the truth and only to make somebody as a scapegoat and to move on from the entire episode and then this Court should interfere. The Labour Court ought to have seen that the very purpose of the domestic enquiry was to fix a responsibility on the Workman and somehow close the issue and not to unearth the truth.

11. The learned counsel specifically pointing out to the document dated 25.07.2002 would submit that it can be seen that the entire



W.P.No.28108 of 2010

impetus was to somehow recover the amount from the Workman and sweep the matter under the carpet. Letter specifically says an arrangement should be made to the police not to proceed further, but however only to threaten and collect the amount alone. That itself shows the attitude of the management. In this background, if the evidence on record is to be approached, then it will be clear that this is a case of no evidence except for the alleged confession which is made by way of duress. The entire episode as if the petitioner's wife called the officials to home is factually incorrect. Already the legal heirs had submitted a claim and have come to the office. Only because during the day in the enquiry they suspected the Workman and in the evening all the officials had descended on the home of the Workman and in the pressure of the moment extracted the statement. From the manner in which it is written so as to exonerate all the other employees would buttress the contention that the entire intention was to make the petitioner as a scapegoat.

12. Per contra, *Mrs.Rita Chandrasekar*, the learned counsel appearing on behalf of the Management would submit that this is a case where the suspicion was made based on the handwriting of the petitioner



W.P.No.28108 of 2010

during the internal fact finding enquiry conducted by the higher official. Once the handwriting of the workman was smelt, immediately the petitioner himself voluntarily admitted and gave the letter. The first letter was given by him in the presence of his wife as well as his brother-in-law as witnesses. If any duress is made, he did not choose to examine his wife or brother-in-law. The second letter was also given thereafter subsequently. The very fact that the Workman shied away from even giving an explanation on merits to the charge memo would conclusively prove the fact. When the charges are serious, even if there is some lapses on the other officials, that cannot be a ground for this Court to interfere in the punishment given to the present Workman.

13. I have considered the rival submissions made on either side and perused the material records of the case.

14. It is the fact that the petitioner has given two statements admitting the guilt and the amount of Rs.5,75,310.25 was also paid by the petitioner. Given the fact that the incident happened in the year 2002, the



W.P.No.28108 of 2010

amount was a huge amount. Be that as it may, as argued by the learned counsel for the Workman the amount was paid by various friends and relatives of the petitioner can also be taken into account. The learned counsel for the petitioner, with all his eloquence, almost convinced this Court that the solitary material of the admission letters alone cannot be a basis for finding that the petitioner is guilty.

15. This Court went through the evidence on record. It can be seen that both sides did not let in any oral evidence before the Labour Court. On the other hand, both sides marked all the documents and the statements which are made during the course of the domestic enquiry. I find from the records that in the domestic enquiry as many as 14 witnesses were examined. As far as first witness to the case namely *Mr.K.Viswanathan*, who conducted the fact finding inquiry was examined as *M.W.I* and in his chief examination, he said that by going through the records and enquiry with all the persons connected in the transaction and on verification of the handwriting style of the staff, he came to the conclusion that *Mr.Jacob Selvam* may be involved in these transactions. The Official had also deposed about the admission made

12/22



W.P.No.28108 of 2010

by the Workman. In the cross examination, the Workman was successful in eliciting the following from MW-1, which reads as follows:

“On verification of the cheques passed, I had some doubt with regard to handwriting token No. Writings which were similar to that of Mr. Jacob Selvam’s handwritings. So, When I enquired him he did not accept but later was informed CM, Mr. Radhakrishnan, and their staff members visited the house of Mr. Jacob Selvam on 24/07/2002, at night, on receipt of a telephone call from his wife. Mr. Jacob Selvam admitted his mistakes to them and also given a letter. In order to collect other details, CM, and myself enquired him. He was also advised by Mr. Abdul Salam to give full details. During my investigation his wife and his brother -in-law were there. His wife has also requested him in different ways and subsequently Mr. Jacob Selvam has come with the truth.”

16. Therefore, his evidence about the suspicion with reference to the handwriting if considered on the whole would only point out that though they initially suspected, no definite conclusions were drawn and he is not in a position to definitely pinpoint that the handwriting in the incriminating documents were that of the petitioner. The second witness, namely *S.Radhakrishnan*, the Chief Manager had deposed as *M.W.3* in the domestic enquiry and its reads thus:



WEB COPY



W.P.No.28108 of 2010

“MW-3-Sir, on reporting on the fraudulent transaction in SB NRE A/c.12034, the same day evening (i.e) 23.07.2002, Circle Office, deputed *Mr.K.Viswanathan*, SM, and *Mr.K.Rajasekaran*, Manager, EDP to our Office for detailed investigation. On going through the records we came to conclusion after enquiring all the staff members myself, and other two that *Mr.J.Jacob Selvam* might be involved in fraudulent transaction. After the days investigations are over with all my staff members, I took a private discussion with my staff the proposed next step like to visit Mr.Jacobs house. At the time I received a call from *Mrs.Jacob Selvam*, from her residence and informed us that her husband has done some mischief as the branch and wanted to convey more about it. We told her to be present in the house informing them we are all coming there. *Mr.R.Subamaniem*, *Mr.Rajagopal*, *Mr.Abdul Salam* and *Mr.Felix Edward* accompanied me to Mr.Jacobs house. During the discussion at Mr.Jacobs house Mr.Jacob admitted that he has misappropriated the funds of SB NRE a/c.12034, to the extent of Rs.5,75,310.25/- and Mr.Jacob gave a confessional statement duly witnessed. We requested him to come to the branch the next day for further discussion. I reported all this to our Circle Office.”

17. However, in his cross examination he deposed as follows;

“... On going through all these documents we want to enquire the staff members connected to the vouchers and called them individually and we started our investigations. When *Mr.Jacob Selvam* turn came though we doubted his handwriting is involved in the relative vouchers he denied initially. We further went indepth of the investigation by bringing the personal file and informed him that more or less his handwriting is tallying with the vouchers but he was not willing to accept his handwriting and denied his involvement initially. After sending him out the cabin we had a discussion and found the voucher evidence shows that *Mr.Jacob Selvam* has involved in the fraudulent transaction. The main evidence is normally in most cases it is his



W.P.No.28108 of 2010

practice to put full stop on completion of a sentence or word...”

WEB COPY

18. Thus reading of the chief and cross examination, it can be seen that the suspicion was made on a particular pattern of writing that is keeping dots in a particular manner at the end of the word/sentences and only because the Workman initially accepted and no detailed enquiry was made. Therefore, there is some evidence on record with reference to the suspicion of the handwriting. Secondly, as far as the statements that are made by the Workman is concerned, it can be seen that while cross examining *Mr.K.Viswanathan*, one question was post to him as to who wrote the letter. It is clear that the Workman himself did not write the letter, somebody else wrote and the Workman after reading that, it was signed. *Mr.K.Vishwanathan* on his own also added that there was not any pressure or duress at that time. In respect of the second statement when *M.W.3* has deposed that it was made in his cabin only, in the cross examination no question at all put to him with reference to as to any duress or pressure being exerted on the Workman. Therefore, if the primary case of the Workman is that there was duress and when the consent witnesses were in the box nothing is even suggested to



W.P.No.28108 of 2010

them that there was pressure or duress and that they threatened the Workman of the criminal complaint, I am of the view that after going through the entire gamut of evidence especially when the petitioner's handwriting is admitted in two vouchers, it is not a case of no evidence except the confession alone.

19. In the domestic enquiry, as many as 14 witnesses were examined and all the relevant documents in the form of records were marked. It is one thing to say that the entire episode also shows involvement or negligence on the part of several other officials also. But that by itself will not exonerate the petitioner of his guilt and I am not able to come to the conclusion that in the entire episode, except for the confession of the Workman there is nothing on record to prove. After all, in the domestic enquiry the standard of proof is that of preponderance of probability, and which means that whether there is a likelihood of the Commission of the delinquency or not. If on the whole the evidence is read, I am unable to accept the contention of the learned counsel for the petitioner. The major arguments were with reference to the availability of the evidence and merits



W.P.No.28108 of 2010

of the matter and I am not in a position to agree with the learned counsel for the petitioner.

20. At this stage, it was argued that since the labour court has altered the punishment into one of discharge, the workmen will be entitled for pension. It is admitted by the learned counsel for the management that the petitioner will be entitled for gratuity. However, with reference to whether he will be entitled for pension, the following facts have to be taken into account.

21. Admittedly, the relevant rules that are applicable are contained in the bipartite settlement dated 10.04.2002 in respect of disciplinary action against the Workman, staff and procedure there for. It is relevant to extract Clause (6), which reads as follows:-

- “6. An employee found guilty of gross misconduct may:
- (a) be dismissed without notice; or
 - (b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
 - (c) be compulsorily retired with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the



W.P.No.28108 of 2010

relevant time and without disqualification from future employment; or

(d) be discharged from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(e) be brought down to lower stage in the scale of pay up to a maximum of two stages; or

(f) have his increments stopped with or without cumulative effect; or

(g) have his special pay withdrawn; or

(h) be warned or censured, or have an adverse remark entered against him; or

(i) be fined.”

22. The Hon'ble Supreme Court of India in the case of ***Bank of Baroda Vs. S.K.Kool (dead) through legal representatives and another***¹ had an occasion to consider that if the punishment imposed is discharge from service, then whether pension can be denied to the delinquent employee. After considering the various provisions of the bipartite settlement, the Hon'ble Supreme Court considered the very Clause 6 and while interpreting the Clause 6(b), held that if the punishment is issued under Clause 6 (b), the delinquent will be entitled for the benefits provided thereunder. It is essential to extract paragraph Nos.15 and 16, which read as follows:-

“15. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give

¹ (2014) 2 SCC 715



WEB COPY



W.P.No.28108 of 2010

nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of Clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well-settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulations if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulations shall not be entitled to that.

16. Accordingly, we hold that the employee's heirs are entitled to superannuation benefits. The entire amount that the respondent is found entitled to along with interest @ 6% per annum should be disbursed within 6 weeks from the date of receipt/communication of this order.”

23. It can be seen that the Clause 6 (d) is also a similar provision.

Therefore, the Workman in the instant case, apart from the gratuity, will also be entitled for pension.

24. In view thereof, this Writ Petition is disposed of on the following terms:-



W.P.No.28108 of 2010

(i) The prayer made in the Writ Petition to quash the award dated

15.12.2009 in I.D.No.79 of 2007 stands negatived;

(ii) The workman would be entitled for gratuity and pension and in view of the fact already the gratuity amount was offered to the workman, who in turn did not receive the same, the said sum shall now be paid to the workman within a period of twelve weeks without any interest, from the date of receipt / production of the website uploaded copy of this order, without waiting for the certified copy;

(iii) Similarly, the pension proposal shall be sanctioned and pension shall be paid to the workman. The said exercise of sanctioning of pension and paying the monthly pension as well as entire arrears shall be paid within a period of twelve weeks from the date of receipt / production of the website uploaded copy of this order, without waiting for the certified copy;

(iv) If the arrears and pension are not paid within a period of twelve weeks as stated above, then thereafter, the same shall carry further interest at the rate of 9 % per annum from today;

(v) No costs. Consequently, the connected miscellaneous petition is closed.

20/22



W.P.No.28108 of 2010

Epilogue: This case stands as an exemplary case, as to how a spouse can help the other and show the path of aram (அறம்) and bring the other within the fold of right path, when he or she strays away. As a matter of fact, the said exemplary good conduct on the part of the petitioner's wife which born out from the records, is one of the reasons for this Court to consider the issue of granting of pension and not leaving the parties to go for one more round of litigation.

23.01.2025

Neutral Citation : Yes
dna/Jer

To

1.The Presiding Officer
Central Government Industrial Tribunal
cum- Labour Court,
I Floor, 'B' Wing No.26, Haddows Road
Shastri Bhavan
Chennai 600 006.

2.The General Manager (IED)
Indian Bank
Personnel Department
Head Office, No.66, Rajaji Salai
Chennai 600 001.

21/22



WEB COPY



W.P.No.28108 of 2010

D.BHARATHA CHAKRAVARTHY, J.

dna

W.P.No.28108 of 2010
and
M.P.No.1 of 2015

23.01.2025