



W.P. No.26123/2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
06.02.2025	18.02.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 26123 OF 2011

S.Immanuel

.. 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
Indian Overseas Bank
Central Office
No.962, Anna Salai, Chennai 600 002.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records from the 1strespondent, quash the award dated 19.11.2010 passed by the 1st respondent Tribunal in ID No.38 of 2007 and consequently direct the 2nd respondent Bank to



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reinstate the petitioner in service with full backwages, continuity of service and all attendant benefits and award costs.

For Petitioner : Mr. D.Muthukumar

For Respondents : Mr. K.Srinivasamurthy for R-2

ORDER

Aggrieved by the impugned order passed by the Tribunal in denying the relief of reinstatement to the workman, viz., the petitioner herein, the present writ petition has been filed challenging the said order dated 19.11.2010 passed in ID No.38/2007.

2. The sum and substance of the gravamen of the allegation against the petitioner is that the petitioner acted prejudicial to the interest of the bank and its customers by attempting to damage the property, by being a member of the Minority Trade Union and also indulged in misappropriation of money of the customers by falsifying their pass books and fabricating the challan and remitted the said sums at a later date, as if the said sums were remitted only on the said date. The falsification of the accounts of 7 customers were made by the petitioner of which with respect to one customer, the petitioner deposited the



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amount through his friend, while in other cases, the remittance was made belatedly by the petitioner by using the counterfoils, which were used for depositing the money. Upon the defalcation in the accounts coming to the notice of the 2nd respondent, the petitioner was placed under suspension and show cause notice was issued.

3. Upon issuance of show cause notice calling for explanation, the petitioner submitted his explanation and the disciplinary authority, not being satisfied with the explanation, proceeded with enquiry, which was conducted by the disciplinary authority himself and on the charges levelled against the petitioner being held to be proved, the petitioner was dismissed from service on 7.2.2000 against which the petitioner preferred appeal, which was also dismissed on 24.12.2003.

4. Being aggrieved over the said dismissal, the petitioner raised an industrial dispute, which was referred to the Industrial Tribunal for adjudication. The Tribunal, upon receipt of the dispute, took up the same for adjudication in I.D. No.38/2007. Before the Tribunal, the petitioner examined himself as W.W.1



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and marked Exs.W-1 to W-10. On the side of the 2nd respondent, one witness was examined as M.W.1 and Exs.M-1 to M59 were marked. The Tribunal, on appreciation of oral and documentary evidence, answered the reference against the petitioner by denying the relief of reinstatement, aggrieved by which, the present petition has been filed before this Court.

5. Learned counsel appearing for the petitioner submitted that the order passed by the Tribunal is perverse and not based on proper appreciation of materials on record. It is the further submission of the learned counsel that even on the ground of preponderance of probabilities, there is no worthwhile evidence, which could form the basis to dismiss the petitioner from service.

6. It is the further submission of the learned counsel that the Tribunal failed to note the acquittal of the petitioner in C.C. No.1215/2001, which is on the same set of charges and has not properly exercised its power u/s 11-a of the Industrial Disputes Act (for short 'the Act'). It is the further submission of the learned counsel that the domestic enquiry was not conducted properly and there was gross violation of principles of natural justice, as the petitioner was not given



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time and support to prove his innocence in the domestic enquiry. It is the further submission of the learned counsel that the documents were marked through witnesses in the absence of the petitioner and the enquiry was conducted in English and that the documents sought for by the petitioner were not provided by the 2nd respondent so as to enable the petitioner to present his case in a proper manner.

7. It is the further submission of the learned counsel that the petitioner has been victimised for his involvement in trade union activities and it is further submitted that the disciplinary authority has not given any reason while passing the said order of dismissal. Though the Branch Manager was not examined at the domestic enquiry, but only the preliminary investigation officer was examined, the Tribunal committed an error by holding that the Branch Manager was examined, which hits at the root of the 2nd respondents case.

8. It is the further submission of the learned counsel that the finding of the Tribunal that the case hinges more on documentary evidence and the oral evidence is only to give a fillip to the documentary evidence is wholly erroneous



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as the Branch Manager, who is alleged by the Tribunal to have pin pointed the act on the petitioner was never examined. In this regard, it is the submission of the learned counsel that in cases of misappropriation or bribery, there should be direct evidence to prove the charges, which has been the consistent ratio laid down by the Apex Court and in the present case, there being no evidence, the finding recorded therein is perverse and erroneous.

9. It is the further submission of the learned counsel that no independent witnesses have been examined to prove the charges, moreso, when it is the case of the 2nd respondent that credit entries were not made on the appropriate dates in the account of the individuals. In the absence of such evidence, the allegation of misappropriation does not merit consideration.

10. In the alternative plea, it is submitted by the learned counsel that the petitioner had put in 17 years of service and dismissing the petitioner from service at this point of time would work out undue hardship to the petitioner as the petitioner would be entitled for pension upon putting 20 years of service and in such a backdrop, this Court may consider the said aspect while imposing



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punishment upon the petitioner with a caveat that the petitioner would not be relegated to undergo punishment without the benefit of pension.

11. Per contra, learned standing counsel appearing for the 2nd respondent submitted that in departmental proceedings, it would suffice if the allegation is proved on the touchstone of preponderance of probabilities and the strict proof as is required in criminal prosecution is not necessary. The allegations against the petitioner have been proved on the basis of the documents and merely because the petitioner has been absolved from the criminal case cannot be the basis to hold that the petitioner has not committed any offence.

12. It is the further submission of the learned counsel that it has been the consistent ratio of the courts that the scale of evidence in departmental proceedings is not akin to criminal prosecution and that being the case, the documents which have been placed during the enquiry point directly to the culpability on the petitioner, the enquiry officer has rightly held the petitioner guilty of the of charges.



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13. It is the further submission of the learned counsel that the mere non-enquiry of the Branch Manager is not fatal to the departmental proceeding so long as the whole case stands premised on the documentary evidence. Further, the preliminary investigation officer has been examined as M.W.1, who has deposed about the investigation done and through whom the documents have been marked and, therefore, the non-enquiry of the Branch Manager cannot be a ground to hold that the departmental proceedings was vitiated.

14. It is the further submission of the learned counsel that misappropriation has been proved through the documents marked and there is no necessity for placing any direct evidence, as the documents are direct evidence to show that it was the petitioner, who was instrumental in the act of misappropriation. It is the further submission of the learned counsel that when the materials, which have been placed during the enquiry unerringly point to the petitioner as the person responsible for the misappropriation, the other cashiers of the 2nd respondent cannot be mulcted with any responsibility for an act, which was perpetrated by the petitioner and the non-examination of the other cashiers would not be fatal to the departmental proceedings.



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15. The department has placed all the necessary evidence to prove the culpability of the petitioner in the offence and all the materials have been rightly appreciated before passing the order of dismissal and the Tribunal, properly appreciating all the facts and documents has upheld the order of dismissal, which does not warrant any interference at the hands of this court.

16. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the parties and perused the materials available on record.

17. The Hon'ble Supreme Court, in ***B.C. Chaturvedi – Vs - Union of India, (1995 (6) SCC 749)***, while dealing with the issue pertaining to the power of the Court relating to judicial review of the order passed by the disciplinary authority, held as under :

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the



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authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.



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13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(Emphasis Supplied)

18. The above view has been reiterated by the Hon'ble Supreme Court in **Principal Secy. Govt. of A.P. - Vs - M. Adinarayana, (2004 (12) SCC 579)**, wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he



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intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

19. In ***Director General of Police, RPF & Ors. - Vs – Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)***, the Hon'ble Supreme Court, adverting to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's case (supra)*, held as under :-



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“12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

*In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings.*



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can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha**, these principles have been consistently followed.



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In a recent judgment delivered by this Court in the **State of Rajasthan & Ors. v. Heem Singh** this Court has summed up the law in following words :

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to



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interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

*In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the*



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enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

In paragraph 13 of the judgment, the Court held that :

“13. Under Articles 226 / 227 of the Constitution of India, the High Court shall not :

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based;



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(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

(Emphasis Supplied)

20. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authority and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authority on the basis of the evidence before it, which has since been confirmed by the Tribunal and not proceed with the case as if it is an appeal against the order of punishment.

21. It has been further held in the said decisions that so long as the enquiry is not defective the Court has to only see whether there was a *prima facie* case for dismissal and whether the employer had come to the *bona fide* conclusion that the employee was guilty of misconduct. What is further to be



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seen is that the conclusion arrived at by the employer is *bona fide* as to the guilt of the employee and that there was no unfair labour practice or victimization involved and to satisfy itself with regard to the punishment imposed. However, if the enquiry is found to be defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified.

22. The Hon'ble Supreme Court, in *Rajendra Kumar Dubey's case (supra)*, following the ratio laid down in *Gunasekaran's case* has held that the High Court, sitting under Article 226 of the Constitution, while determining its scope of interference in a departmental proceedings is only bound to determine whether (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and



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capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

23. It is to be stressed that the Court in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceeding is not on the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its



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writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

24. The words of eminent jurist V.R.Krishna Iyer, J., resonates loud, where His Lordship (as he then was), had stated that *“The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny”*.



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25. Bearing the first test principles in mind, this Court, before embarking upon analysing the materials on record in the light of the ratio laid down above, is bound to point out that the contention on behalf of the petitioner that the act of misappropriation and bribery should be proved through direct evidence, is wholly erroneous, as it has been the consistent view of the courts that insofar as domestic enquiry is concerned, the degree of proof relating to the allegation in a domestic enquiry is not akin to the degree of evidence, which is required in a criminal trial, as in a criminal trial, the standard of proof is proof beyond reasonable doubt, whereas in a domestic enquiry, the standard of proof is on preponderance of probability and, therefore, there arises no necessity for direct evidence to be placed, so long as the documentary evidence probabilises the allegation. In the case on hand, act of misappropriation on the part of the delinquent is sought to be proved through documentary evidence, which cannot be said to be sufficient as no ocular testimony is necessary when the whole case is premised on documents. Therefore, the aforesaid contention does not merit acceptance.



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26. In the light of the above, keeping in mind the principles laid down in the aforesaid decision, a careful perusal of the order of dismissal passed by the 2nd respondent, which has, hitherto, been approved by the Tribunal reveals that the preliminary investigation officer was examined as M.W.1, who has been erroneously noted by the Tribunal as the Branch Manager, has clearly spoken about the acts of the petitioner. Very many documents, which carry the handwriting of the petitioner have been marked to establish the act of misappropriation on the part of the petitioner. It is the case of the petitioner that the signature had not been proved, which contention has been rejected by the Tribunal by holding that the authorities higher in the administrative hierarchy are conversant with the handwriting of the petitioner and, therefore, there requires no necessity for proving the said signature. The said finding of the Tribunal is in line with the ratio laid down with regard to the degree of proof required in a domestic enquiry and, therefore, the said finding does not require any interference.

27. It is the case of the 2nd respondent that on the basis of the complaints from the customers, whose accounts were alleged to have been falsified by the



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petitioner by not crediting the amount inspite of having issued signed challans, however, it is countered by the petitioner by contending that no complaint has been raised by any of the customers and, therefore, there is no basis for the said enquiry. In the light of the aforesaid contentions, a perusal of the materials and the findings recorded therein reveal that enquiry was properly conducted and the involvement of the petitioner in the aforesaid act of temporary misappropriation has also been established through documentary evidence.

28. Though materials in the form of documents, which carry the handwriting and signature of the petitioner have been placed at the time of enquiry, the further case of the petitioner is premised on not being provided with sufficient opportunity and that he was not well versed in English and was not in a position to clearly understand the documents as documents in vernacular was not given to the petitioner. The petitioner, being the cashier in the bank would necessarily be a graduate or even at the very worst a higher secondary certificate holder and, therefore, the petitioner cannot feign ignorance to English and claim that he was not able to understand the proceeding. Further, it is the claim of the petitioner that he was not provided with opportunity to put forth his defence,



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however, there is no material to hold that the said contention deserves acceptance and mere contention without proper substantiation would not suffice to infer that the petitioner was not provided with sufficient opportunity. Further, it is to be noted that the petitioner was provided with a choice person to assist him during the proceedings, which clearly establish that not only the petitioner was provided with sufficient opportunity, but also provided with a choice person to assist him during the proceedings, which is due compliance of principles of natural justice and such being the case, the claim of the petitioner that he was denied opportunity cannot be accepted as no material to evidence the same has been placed to substantiate the said contention.

29. It is to be noted that the allegation levelled against the petitioner is of a very grave nature. The petitioner, who is entrusted with the task of handling public money, highest standards of probity is expected of the said individual. However, without adhering and maintaining the highest standards of probity, the petitioner had indulged in acts, which were prejudicial to the interest of the customers and had brought down the reputation of the bank in the face of the general public. Persons employed in institutions, which handle public money,



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should exhibit highest standards of probity and purity and should maintain themselves with utmost integrity and honesty, else the trust reposed on the said individuals as well as the institution would diminish in the eyes of the general public and its customers.

30. In the case on hand, the petitioner had acted prejudicial to the interest of the institution, which had given him his livelihood, but without the scantiest regard for the said act, the petitioner had indulged in acts, which had not only brought down the reputation of the institution, but had brought disrepute to him as well and such an act had resulted in the act of dismissal of the petitioner from service.

31. In ***Boloram Bordoloi – Vs – Lakhimi Gaolia Bank & Ors. (2021 (3) SCC 806)***, the Supreme Court had occasion to consider a similar issue relating to procedural lapses in the discharge of duty by the appellant therein, as Manager of the bank and in the said context held as under :-

“13. The manager of a bank plays a vital role in managing the affairs of the bank. A bank officer/employee deals with the public money. The nature of his work demands vigilance with the inbuilt



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requirement to act carefully. If an officer/employee of the bank is allowed to act beyond his authority, the discipline of the bank will disappear. When the procedural guidelines are issued for grant of loans, officers/employees are required to follow the same meticulously and any deviation will lead to erosion of public trust on the banks. If the manager of a bank indulges in such misconduct, which is evident from the charge memo dated 18.06.2004 and the findings of the enquiry officer, it indicates that such charges are grave and serious. In spite of proved misconduct on such serious charges, disciplinary authority itself was liberal in imposing the punishment of compulsory retirement. In that view of the matter, it cannot be said that the punishment imposed in the disciplinary proceedings on the appellant, is disproportionate to the gravity of charges. As such, this submission of the learned counsel for the appellant also cannot be accepted.”

32. In the said case, the nature of the work discharged by the workman therein required maintenance of the highest standards of probity and integrity and is bound to follow the procedures prescribed, which are in the interest of the employer. In the case on hand, as aforesaid, there is no charge relating to misappropriation, but the charges relate to negligence in the discharge of duties and further the petitioner was also inflicted with other punishments anterior in point of time.



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33. 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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34. 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 punishment. Such power is exercised when the court finds that the



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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)

35. 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.

36. The act of misappropriation of the petitioner is not only shocking the conscience of the Court inspite of it being in contravention of the rules, but has



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eroded the faith, which the general public had invested in the institution.

Though the learned counsel for the petitioner had sought the indulgence of this Court to impose such a punishment, which would enable the petitioner to receive pensionary benefits, if he puts in 20 years of service, however, the gravity of the offence, which has been alleged against the petitioner, which had been proved, clearly does not eke any sympathy at the hands of this Court. Any sympathy given to the petitioner would be a mistaken sympathy, as it would be against the interest of justice and would be a travesty of justice to the general public, who had reposed faith on the 2nd respondent through its employee, viz., the petitioner. This Court cannot be a partner to such an act and, therefore, rightly, the Tribunal, appreciating the materials, had confirmed the order of dismissal passed by the 2nd respondent, which, both on facts, as well as law, is justified and this Court does not find any infirmity in the same warranting interference.

37. For the reasons aforesaid, this writ petition lacks merit and, accordingly, the same is dismissed confirming the order impugned herein dated 19.11.2010 passed in I.D. No.38/2007. In the circumstances of the case, there shall be no order as to costs.



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18.02.2025

Index : Yes / No

GLN

To

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



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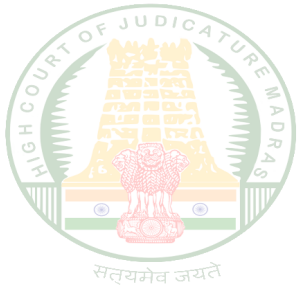
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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO. 26123 OF 2011**

Pronounced on



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W.P. No.26123/2011

18.02.2025