

W.P. No.3635 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2025
PRONOUNCED ON : 02.04.2025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 3635 of 2020

N.Sakthivelu
S/o. Nagusamy,
13/23, Venkatapuram,
Jallipatti Post – 642 112
Udumalaipettai Taluk ...Petitioner

Vs.

The Management of
K.328, Chinnakumarapalayam,
Primary Agricultural Co-operative
Credit Society,
Kurichikottai Post,
Udumalaipettai Taluk.
Coimbatore District. ...Respondent

Prayer in W.P.

To issue appropriate Writs, Orders or Directions and in particular issue a Writ in the nature of Certiorarified Mandamus after calling for the records pertaining the Award dated 05.07.2018 in I.D.No.123/2010 from the Additional Labour Court, Coimbatore, quash the same and consequently direct the respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits, Award



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costs.

WEB COPY Appearance of Parties:

For Petitioner : Mr. V.Ajoy Khose, Advocate

For Respondent : Mr.R.Bala Ramesh, Advocate

J U D G M E N T

Heard.

2. The petitioner was employed by the respondent—Primary Agricultural Co-operative Credit Society (hereinafter referred to as "the Management"). He had been serving in the Society since 1991 and was last holding the post of Senior Clerk/Cashier from the year 2001. Pursuant to a disciplinary enquiry, the Management issued an order of dismissal dated 05.12.2007 (Ex.M15), thereby terminating his services. Prior to that, a charge memo dated 28.02.2007 (Ex.M1) had been issued to him, followed by a second show cause notice dated 04.06.2007 (Ex.M12) after the conclusion of the enquiry.

3. Aggrieved by his dismissal, the petitioner raised an industrial dispute before the Government Labour Officer at Coimbatore. As the conciliation efforts failed, the Officer submitted a failure report. Based on that, the petitioner filed a claim statement dated 05.05.2010 before the

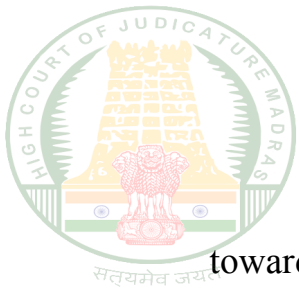


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Labour Court at Coimbatore. The dispute was taken on file in I.D. No.

123 of 2010, and notice was issued to the Management. In response, the Management filed its counter statement dated 10.02.2011. No oral evidence was adduced before the Labour Court; however, on behalf of the Management, 15 documents were filed and marked as Exhibits M1 to M15.

4. Before the Labour Court, the petitioner-workman did not challenge the validity of the domestic enquiry conducted against him but limited his submissions to the issue of proportionality of the punishment and the quantum of back wages. The Labour Court found that, in his explanations marked as Ex.M7 and Ex.M9, the workman had clearly admitted to having misappropriated customer funds, which he subsequently repaid and for which he prepared a receipt. These documents, Ex.M7 and Ex.M9, amounted to a clear admission of misconduct and dereliction of duty. The Labour Court further noted that in response to the second show cause notice (Ex.M13), the workman submitted a reply (Ex.M14) in which he pleaded guilty, tendered an apology, and acknowledged his liability to pay a sum of Rs. 1,96,856/-



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towards the loss of interest sustained by the Society. He also sought time to comply with the directions issued by the Deputy Registrar.

5. The Labour Court categorically held that, since the petitioner had committed serious misconduct by misappropriating substantial funds of the Management Society, and in view of the resultant loss of confidence in him by the Management, the punishment of dismissal was justified. It observed that there was no scope for misplaced sympathy or leniency in such circumstances. In support of its conclusion, the Labour Court relied on the judgment of the Hon'ble Supreme Court in **Diwan Singh v. Life Insurance Corporation of India**, reported in (2015) 2 SCC 341, wherein it was held as follows: –

“In Rajasthan State Road Transport Corporation and another v. Bajrang Lal, this Court, following the case of Municipal Committee, Bahadurgarh v. Krishnan Behari and others, has opined that in cases involving corruption there cannot be any other punishment than dismissal. It has been further held that any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. In said case (Rajasthan SRTC), the respondent/employee was awarded punishment of removal from service. In the present case it is compulsory retirement.



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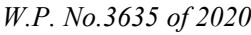


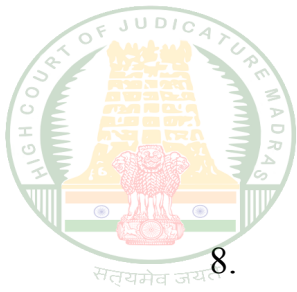
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Learned counsel for respondents submitted that on earlier occasion, appellant was awarded minor punishment, for his misconduct, regarding defalcation of stamps. And now he is found guilty for the second time. Therefore, in the above circumstances in view of the law laid down by this Court, as above, we are not inclined to interfere with the impugned order passed by the High Court.”

6. The present writ petition has been filed challenging the said Award dated 05.07.2018. When the writ petition was taken up for admission on 14.02.2020, notice was ordered to the respondent. Subsequently, when the matter was listed on 20.02.2024, it was referred to the Mediation Centre, and both parties were directed to appear before it. However, as the mediators were unable to facilitate a settlement, the matter was returned to this Court. The Mediation Centre communicated the same through a letter dated 25.06.2024, upon which the case was placed before this Court for further proceedings.

7. Since the counsel for the petitioner, despite the above developments, insisted on contesting the case, it becomes necessary to extract the petitioner's first explanation dated 04.05.2007 (Ex.M7), wherein he stated as follows: –

[illegible]



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8. It is unnecessary to reproduce the other admissions made by the petitioner, as they have already been considered and referred to by the Labour Court. Learned counsel for the petitioner relied upon the decision of the Supreme Court in **The Workmen of M/s. Firestone Tyre and Rubber Co. of India v. The Management & Others**, reported in (1973) 1 SCC 813, to contend that, even after a valid and proper enquiry by the employer, the Labour Court is empowered under Section 11A of the Industrial Disputes Act to reappreciate the evidence on record and arrive at independent conclusions. It was further submitted that the Labour Court may also examine the proportionality of the punishment imposed.

9. He further referred to a subsequent decision of the Supreme Court in **Mavji C. Lakum v. Central Bank of India**, reported in (2008) 12 SCC 726, which reiterates the same principle. He placed reliance on the following passage found in paragraph 20, which reads as under: –

“

So far the finding of the learned Single Judge appears to be correct. However, the whole thrust of the judgment has changed merely because the Industrial Tribunal had found the inquiry to be fair and proper. The learned Judge seems to be of the opinion that if the inquiry is held to be fair and proper, then the



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Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that is not the correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under Section 11-A has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons.”

10. Learned counsel also referred to the judgment of the Hon’ble Supreme Court in **Central Bank of India Ltd. v. Prakash Chand Jain**, reported in AIR 1969 SC 983, to contend that the Labour Court ought to

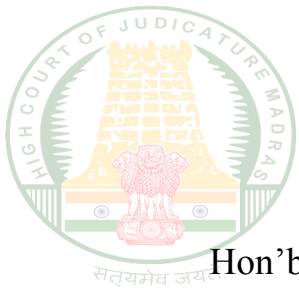


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have held that the findings were perverse and unsupported by legal evidence. He further relied on the decision in **Kuldeep Singh v. Commissioner of Police & Others**, reported in (1999) 2 SCC 10, and submitted that judicial interference is warranted where the findings of a domestic enquiry are based on no evidence, are perverse, could not have been arrived at by a reasonable or prudent person, or are influenced by external dictates. In such circumstances, it was argued, judicial review is justified.

11. He also relied on the judgment of the Hon'ble Supreme Court in **Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd. & Another**, reported in (1999) 2 SCC 21, to contend that, under the law of evidence, the contents of a document must be proved either by primary or secondary evidence. Mere admission of a document may amount to admission of its contents, but not of the truth of those contents. Documents which are not properly produced and marked in accordance with the provisions of the Evidence Act cannot be relied upon by the court. Simply filing a document in court does not amount to proof of its contents.

12. Finally, he placed reliance on a recent judgment of the



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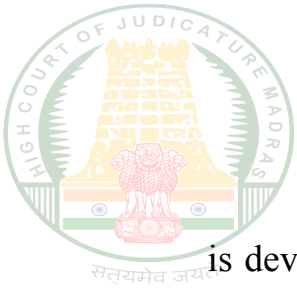
Hon'ble Supreme Court in **General Manager, Personnel, Syndicate**

Bank & Others v. B.S.N. Prasad, reported in 2025 SCC OnLine 118, to

contend that the exercise of disciplinary authority is always subject to the principles of proportionality and fairness. It was submitted that where the misconduct is serious, yet the penalty of dismissal appears disproportionately harsh—particularly in light of an otherwise long and unblemished service record, an admission of error due to work-related pressure, and the recovery of the financial loss sustained—the punishment of dismissal may be substituted with a lesser penalty.

13. However, none of the aforesaid considerations are present in the case of the petitioner. This is a case where the petitioner has unequivocally admitted to his misconduct. The fact that he subsequently made good the loss and submitted to a surcharge order passed by the Deputy Registrar does not bring his case within the ambit of the principles laid down in the judgments relied upon. The Labour Court, while considering the matter, has duly borne in mind the scope of its powers under Section 11A and has rightly declined to extend any indulgence in favour of the petitioner.

14. The impugned award warrants no interference. The writ petition



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is devoid of merit and is accordingly dismissed. However, there shall be
no order as to costs.

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

The Presiding Officer,
Additional Labour Court,
Coimbatore.



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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