



W.P. No.6155/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.02.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.6155 OF 2011

The Asst. General Manager
Indian Bank, Circle Head
Circle Office
Pondicherry 605 011.

.. Petitioner

- Vs -

1. The Presiding Officer
Central Government Industrial Tribunal
-cum-Labour Court
Chennai.

2. K.B.Chandramouleeswaran

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the record of the 1st respondent in ID No.36 of 2007 and quash its award dated 22.7.2010.

For Petitioner : Mr. P.Raghunathan

For Respondents : Mr. K.M.Ramesh, SC, for
Mr. V.Subramani, for R-2



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ORDER

Aggrieved by the order of the 1st respondent in directing reinstatement of the 2nd respondent with 50% backwages, the present petition has been filed by the petitioner.

2. Tor brevity, the petitioner will be referred to as the 'Bank' and the 2nd respondent will be referred to as the 'employee'.

3. The brief facts necessary for the disposal of the present petition are as under :-

The 2nd respondent joined the services of the Indian Bank on 23.01.1984 as Clerk/Shroff in Ariyankuppam Branch, Pondicherry. On 15.9.2001, by means of a memo, allegation was levelled against the 2nd respondent that on 14.8.2001, he had arrived at the total of Rs.3,50,243/- towards 88 payments in the Rough Cash Book, which was later altered to Rs.3,52,243/- which resulted in excess cash of Rs.2,000/- at the hands of the 2nd respondent, thereby, the 2nd respondent



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misappropriated the same and arrived at the cash balance of Rs.3,70,449.30 which was lodged in the cash safe and that the 2nd respondent held the Rs.2000/- cash on his person till the same was found out without reporting the same to the Assistant General Manager and upon questioning, he tendered a withdrawal slip drawn on his SB A/c No.7328 for the said sum knowing fully well that the transaction was over for the day, thereby, the 2nd respondent manipulated all the records of the bank to reflect the said withdrawal.

4. Towards the said memo, the 2nd respondent submitted his explanation dated 22.9.2001, which, having been found to be not satisfactory, resulted in the issuance of charge with four charges, vide charge memo dated 20.02.2002, which is alleged to be a major misconduct under clause 19.5 (j) of the Bipartite Settlement dated 19.10.1966.

5. The enquiry was proceeded with from 27.5.2002 to 18.7.2002 in which M.W.1 and M.W.2 were examined and Exs.MEX-1 to MEX-47 were marked on the side of the bank and on the side of the employee, the employee examined himself as D.W.1 and no documents were marked. The enquiry officer held the



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charges proved against the employee/2nd respondent and upon providing a copy of the enquiry report dated 11.01.2003 to which the 2nd respondent submitted his explanation on 12.03.2003 and being not satisfied with the said explanation, vide notice dated 19.09.2003, punishment of removal from service was proposed against the 2nd respondent to which he replied on 29.9.2003 and after affording an opportunity of personal hearing to the 2nd respondent on 01.10.2003, during which time also the 2nd respondent pleaded not guilty, punishment of removal from service was imposed on the 2nd respondent, vide order dated 9.2.2004.

6. Against the said punishment, the 2nd respondent preferred appeal, which was rejected on 30.11.2004 without application of mind to the materials. Aggrieved by the same, the 2nd respondent raised an industrial dispute, which, upon reference, was taken up in ID No.36/2007 and after adjudication, the Tribunal held that there are no evidence to point the finger of guilt on the 2nd respondent and, therefore, directed reinstatement of the 2nd respondent in service along with 50% backwages, continuity of service and other attendant benefits. Aggrieved by the same, the present writ petition has been filed by the Bank.



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7. Learned counsel appearing for the petitioner submitted that the findings recorded by the Tribunal are wholly improper and erroneous and not properly appreciating the evidence submitted by the petitioner. It is the further submission of the learned counsel that the corrections carried out by the 2nd respondent in the records of the bank have been accepted and upon the difference in the amount coming to light, the 2nd respondent had come forward to make good the loss by submitting withdrawal slip, which clearly shows that act of misappropriation done by the 2nd respondent. In the light of the above, the conclusion with regard to the 2nd respondent not being guilty of misappropriation arrived at by the Tribunal is wholly unwarranted and not sustainable on facts and the order of reinstatement in the light of the above deserves to be interfered with.

8. It is the further submission of the learned counsel that even otherwise, the award was received by the petitioner with the communication dated 6.8.2010 from the Government, which was subsequently published in the Government Gazette. The 2nd respondent had received a sum of Rs.5,53,805/- towards



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gratuity and provident fund, which has to be refunded by the 2nd respondent if the award of reinstatement is to be complied with. However, the 2nd respondent has not come forward to refund the said amount and, therefore, the order of reinstatement and consequential backwages could not be complied with. Therefore, it is prayed that this Court may pass appropriate directions.

9. Per contra, learned senior counsel appearing for the 2nd respondent submitted that the Tribunal has properly appreciated the materials in proper perspective and in the absence of material records, which points to the culpability of the 2nd respondent in the commission of misappropriation, the Tribunal has rightly interfered with the enquiry report and the consequential punishment and had ordered reinstatement, which does not require any interference at the hands of this Court.

10. It is the further submission of the learned senior counsel that the 2nd respondent has been paid a sum of Rs.5.5 Lakhs and odd, but the consequential backwages and other benefits receivable by the 2nd respondent works out to more than rs.10 Lakhs and, therefore, the petitioner is bound to pay amount to



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the 2nd respondent on account of reinstatement and, therefore, the plea of the petitioner for the 2nd respondent to refund the amount, paid by the petitioner is wholly erroneous and not borne out by any materials. Accordingly, he prays for dismissal of the present petition.

11. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions : -

- 1) *Anil Kumar – Vs – Presiding Officer & Ors. (1985 (3) SCC 78);*
- 2) *Rocho (P.B.) – Vs – Union of India & Ors. (1984 (2) LLN 841 (Ker));*
- 3) *D.Vincent – Vs – The Director of Government Examinations (1987 WLR 69);*
- 4) *Hardwari Lal – Vs – State of UP & Ors. (1999 (8) SCC 582);*
- 5) *Kuldeep Singh – Vs – Commissioner of Police & Ors. (1999 (2) SCC 10);*
- 6) *Union of India & Ors. – Vs – Gyan Chand Chattar (2009 (12) SCC 78); and*
- 7) *Dev Singh – Vs – Punjab Tourism Development Corporation Ltd. & anr. (2003 (8) SCC 9)*



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12. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

13. The main ground, which was canvassed by the 2nd respondent before the Tribunal, leading to the punishment being set aside is that of bias on the part of the enquiry officer. The contentions, which weighed with the Tribunal to set aside the order of punishment, as seen from the order of the Tribunal is as follows :-

“11. It is in evidence that there have been other alterations of similar nature in the register on the same day. In order to establish the guilt against the petitioner it is relevant to consider the petitioner has had the mens rea to appropriate to himself a sum of Rs.2,000/- on the day. Comprehensively it is not a case with any evidence to tilt the decision against the petitioner even on preponderance of probability. The complainant has not been examined nor copy of the complaint has been given to the petitioner. There is discrepancy in the case pleaded by the respondent regarding the date of occurrence as 19.08.2021 whereas according to the petitioner it is 14.08.2021. While the case of the petitioner is a total denial of the whole charges including misappropriation of money by him, the charges do not



stand proved with some evidence, say, leval evidence or material logically probative to a prudent mind under which it could safely be held that the petitioner is guilty. The complainant viz., Branch Manager not being a witness to the occurrence evidently cannot be said to have had a direct knowledge relating to the incident. His information is what he heard from the Asstt. Branch Manager who was then in-charge of the Branch Manager signifying that the knowledge of the Branch Manager to lodge the complaint is from hearsay information. True, there is no allergy to hearsay provided there is a rational nexus and credibility. In this case both the witnesses from the side of the Managerment as well as on the side of the delinquent are not consisttent in their version regarding the aspect that the petitioner admitted before the Asstt. Branch Manager that he had taken the money thinking that he might have made some short payment.”

14. A perusal of the above findings of the Tribunal reveals that the fulcrum of the case, viz., the complaint, has not been provided to the 2nd respondent. Further, the complainant, who is the author of the complaint, has not been examined. Further, not only there is material discrepancy with regard to the date of occurrence, but there are also interpolations in the Register barring the interpolation, which is the issue in the present case. Further, the contradiction in



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the evidence of the witnesses galore, which has led the Tribunal to the finding that even on the touchstone of preponderance of probability, which is the basis on which the evidence in an enquiry has to be construed, has not been established, necessitating the Tribunal to set aside the order of punishment.

15. It is to be pointed out when there are glaring deficiencies in the evidence and materials, which are necessary to establish the charges, and that the said documents have not been placed at the time of enquiry, necessarily, the report of the enquiry officer suffers from perversity bordering bias, more so, when the report is against the delinquent. Opportunity of fair hearing is the hall mark of principles of natural justice and when the basic necessities in the form of providing of report and examination of the witness, who is the complainant, has not been done, necessarily, the report cannot form the basis for dismissing the delinquent and, therefore, the Tribunal is well within its power to interfere with the said punishment, moreso, when the said punishment is perverse and not in consonance with the materials available on record. When neither the complaint is provided to the 2nd respondent nor the complainant is examined at the time of enquiry, there is definitely an element of bias, which strikes at the root of the



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enquiry report and the punishment, which is the off-shoot of the enquiry report does not merit acceptance and the Tribunal has rightly interfered with the said punishment.

16. Though the Tribunal had ordered reinstatement of the 2nd respondent with backwages and other attendant benefits, however, it is to be pointed out that the delinquency, which has been alleged to have taken place in the year 2001, more than two decade have passed by now and even when the order had come to be passed, a decade had passed. Further, the 2nd respondent has been paid his gratuity and provident fund and other benefits, which is sought to be recovered by filing miscellaneous petition, however, which has still not been paid by the 2nd respondent. In such circumstances, at this distant point of time, after more than two decades from the date of removal from service, it would not be in the interest of justice to order reinstatement, as no fruitful purpose would stand served. In such cases, it has been laid down by the Apex Court that in lieu of reinstatement, lumpsum compensation could be awarded. The aforesaid ratio has been laid down by the Apex Court in the case of Senior ***Superintendent***



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Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Ors., (2010 (2) CCC 169)

wherein, the Apex Court held thus :-

*“7. In a recent judgment authored by one of us (R.M. Lodha, J.) in the case of **Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. MANU/SC/1213/2009 : (2009) 15 SCC 327** the aforesaid decisions were noticed and it was stated:*

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in



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violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

8. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. In our considered view, the compensation of Rs. 40,000/- to each of the workmen (respondent Nos. 1 to 14) shall meet the ends of justice.”

17. The facts in the present case stands squarely covered by the ratio laid in the aforesaid decision and, therefore, in the interest of either party, it would not be justifiable to confirm the relief of reinstatement; rather it would suffice if the workman is awarded lumpsum compensation in lieu of reinstatement.



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18. In such view of the matter, this writ petition is disposed of directing the Management to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as lumpsum one time compensation in lieu of reinstatement, which shall be paid by the Management within a period of four weeks from the date of receipt of a copy of this order, failing which the Management would be liable to pay interest at the rate of 7.5% p.a., from the date of passing of the award till the date of actual payment.

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