

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.07.2025

Pronounced on : 26.08.2025

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P (MD) Nos.5378 of 2012 and 16552 of 2021

and

M.P (MD) No.1 of 2012

and

M.P (MD) No.1 of 2013

W.P (MD) No.5378 of 2012

The Management,
The Lakshmi Vilas Bank Ltd.,
Personnel Department,
Administrative Office,
Salem Road, Kathapara,ai,
Karur – 639 006.

... Petitioner

Vs.

1. The Deputy Commissioner of Labour (Appeals), Trichy.

2. N.Vivekandan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in TNSE (A) 1/98 and quash its order dated 19.01.2012.

For Petitioner

: Mr.Annantha Gopalan
for T.S.Gopalan & Co.,



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W.P (MD) Nos.5378 of 2012 and 16552 of



For R1

: M/s.A.L.Ganthimathi,
Senior Counsel for Mr.A.Saravana

For R2

: Mr.S.Shanmugavel,
Additional Government Pleader

W.P (MD) No.16552 of 2021

N.Vivekandan

... Petitioner

Vs.

1. The Lakshmi Vilas Bank Ltd.,
Personnel Department Administrative Office,
Salem Road, Kasthaparai, Karur – 639 006.
 2. The Deputy Commissioner of Labour (Appeals),
Trichy.
- ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order dated 19.01.2012 of the second respondent herein in TNSE (A) No.1 of 90 and quash the same.

For Petitioner

: M/s.A.L.Ganthimathi,
Senior Counsel for Mr.A.Saravana

For R1

: Mr.Annantha Gopalan
for Agam Legal

For R2

: Mr.S.Shanmugavel,
Additional Government Pleader



COMMON ORDER

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As the validity of an order passed under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, in TNSE (A) No.1 of 90, is the subject matter of challenge in both these writ petitions, they were heard together and reserved for orders on 07.04.2025. Thereafter, in view of certain ambiguity, the matter was again taken up for consideration on 09.07.2025 and, after having further heard learned counsel on either side, the matter was again reserved for orders on 09.07.2025. Accordingly, these matters are being disposed of by this common order.

2. For the sake of convenience, the parties are referred to as they are arrayed in W.P (MD) No.5378 of 2012.

3. The brief facts that are relevant for disposal of these writ petitions are as under:-

3.1. While the Respondent No.2 herein was working as a 'Manager' of the Calicut Branch of the petitioner/ Bank, he was placed under suspension and was subjected to disciplinary proceedings by issuing a charge sheet, dated 23.02.1996 containing 19 charges. In response to the same, the Respondent



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No.2 submitted his explanation dated 23.03.1996, denying all the charges. At that stage, an additional charge sheet dated 28.03.1996 was issued containing 4 more charges, and the Respondent No.2 submitted his explanation to the same on 20.04.1996, denying the additional charges as well. Having not been satisfied with the explanation submitted by the Respondent No.2, the Petitioner Bank appointed an Enquiry Officer to hold an enquiry into the charges. Accordingly, the Enquiry Officer conducted a detailed enquiry and submitted his report dated 11.07.1997 holding 13 charges out of 23 as proved i.e. Charge Nos.4, 7, 9, 11-15 and 17-19 of the first charge-sheet and the Charge Nos.1 and 3 of the second charge sheet as proved.

3.2. It was thereafter, a show-cause notice was issued to the Respondent No.2, affording an opportunity to him to submit his further explanation and accordingly, the Respondent No.2 submitted his explanation and thereafter, after duly affording an opportunity of personal hearing, the respondent bank passed Order dated 19.08.1997, dismissing the Respondent No.2 from service with immediate effect. Aggrieved by the same, Respondent No.2 filed an appeal under Sub-Section (2) of Section 41 of the Act, 1947, before the Respondent No.1 herein. The said appeal was taken on record and an elaborate enquiry was undertaken by the Respondent No.1. In the said



enquiry, the Respondent No.2 examined himself as PWA-1 and marked Exhibit A-1 to Exhibit A-58 and on the other hand, the petitioner bank, having cross-examined the Respondent No.2, got marked Exhibit R-1 to R-15.

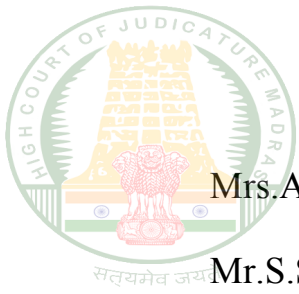
3.3. It was thereafter, the first respondent appellate authority considered the charges that are held to have been proved against the Respondent No.2 by the Enquiry Officer in elaborate. At this stage, it is necessary to point out that the said charge numbers were wrongly mentioned as Charge Nos.3, 6, 8, 17 and 18 instead of Charge Nos.4, 7, 9, 18 and 19 in the impugned order. The charges 4, 7 and 9, which were held to have been proved by the Enquiry Officer against the Respondent No.2, were found to have been not proved by the first respondent in the impugned order. Insofar as Charges 11 to 15 and 17 are concerned, they were held to have been proved by the Respondent No.1 also. As already noted above, the said Charge Nos.11 to 15 and 17, which were held to have been proved by the Respondent No.1 were mistakenly numbered in the impugned order as Charge Nos.10 to 14 and 16. The charges 1 and 3 of the second charge-sheet were also held to have been proved by the Respondent No.1 also. The Respondent No.1, having held the said charges 11 to 15 and 17 of the first



charge-sheet and charges 1 and 3 of the second charge-sheet as proved against the Respondent No.2, passed the final order holding that the punishment of dismissal from service imposed on the Respondent No.2 is disproportionate to the proved misconduct and thereby, proceeded to set aside the order of dismissal and accordingly allowed the appeal filed by the Respondent No.2 by an order date 19.01.2012.

3.4. It is aggrieved by the said order dated 19.01.2012, the petitioner Bank as well as the Respondent No.2 approached this court by filing the present writ petitions. The Petitioner Bank approached this court as early as in the year 2012 by filing W.P (MD) No.5378 of 2012 and this court while entertaining the said writ petition, granted interim stay of the operation of the impugned order on 18.04.2013 and the said interim order is in operation as on date. While so, after a lapse of about a decade, the Respondent No.2 herein, filed W.P (MD) No.16552 of 2021, challenging the very same order dated 19.01.2012, apparently as a counter blast to the writ petition filed by Petitioner Bank, contesting the charges that were held to have been proved against him.

4. Heard Mr.Annantha Gopalan, learned counsel for the petitioner and



Mrs.A.L.Ganthimathi, learned Senior Counsel for the Respondent No.2 and
Mr.S.Shanmugavel, learned Additional Government Pleader appearing for
the Respondent/ Appellate Authority.

5. The learned counsel appearing for the petitioner bank primarily contested the impugned order on the ground that the first respondent, while acting as an appellate authority under Sub-Section (2) of Section 41 of the Act, 1947, has no power or jurisdiction to set aside the punishment imposed on the Respondent No.2 on the ground of disproportionate punishment. According to learned counsel, once the appellate authority comes to the conclusion that some of the charges levelled against the Respondent No.2 are proved and there was misconduct on the part of the Respondent No.2, it is obligatory on the part of the appellate authority to dismiss the appeal filed by the Respondent No.2 herein. He also further contended that the appellate authority, under Sub-Section (2) of Section 41 of the Act, 1947, has very limited jurisdiction i.e., only to the extent of verifying as to whether there was a reasonable cause for dispensing with the services of the Respondent No.2 or not or on the ground that the Respondent No.2 has not been found guilty of misconduct. According to him, in the instant case, the appellate authority, having arrived at a conclusion that some of charges were proved



against the petitioner, ought to have dismissed the appeal in *limine*. He also further contended that in facts of the case on hand, the respondent appellate authority has no other option except to dismiss the appeal, in the light of the fact that the charges 10 to 15 and 17 of first charge-sheet and charges 1 and 3 of the second charge-sheet were held to have been proved and the same was also accepted by the Respondent No.1.

6. He has also placed reliance on various decisions of the Hon'ble Apex Court to contend that the Bank officials were expected to act honestly and shall not give any scope for any fraudulent activities etc., as they are dealing with the public money and in case, if any such dishonesty is found in the acts of any Bank officials, the very confidence in the Bank itself will be lost among the general public and therefore, the courts should be at lost to interfere with the orders passed in the matter of disciplinary proceedings against the employees of the Bank and he relied upon the following decisions:

1. “*Union Bank of India -vs- Vishwa Mohan'* reported in (1998) 4 SCC 310
2. “*State Bank of India -vs- Bela Bagachi*” reported in (2005) 7 SCC 435



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3. ***“State Bank of India -vs- Ramesh Dinkar Punde”***

reported in (2006) 7 SCC 212

4. ***“Deputy General Manager and others -vs- Ajai Kumar***

Srivatsava” reported in 2021 SCC OnLine SC 4

7. He also relied on various other decisions reported in ***“South India Bank -vs- T.D. Pichuthayappan and others”*** reported in AIR 1954 Mad 377, ***“Cranganore Town Co-operative Bank Ltd., -vs- Sankara Velichapad and others”*** reported in 1967 (2) LLJ 116 (Ker), ***“Management of Lakshmi Vilas Bank Ltd., -vs- Appellate Authority”*** reported in 2001 (4) LLN 868 and ***“R.Kannabiran -vs- DCL Appellate Authority”*** reported in 2002 (3) LLN 541” dealing with the scope and ambit of appellate power conferred on the Respondent No.1 under Section 41(2) of the Act, 1947.

8. On the other hand, learned Senior Counsel appearing for the Respondent No.2 contended that the Respondent No.1 interfered with the order of dismissal passed by the respondent Bank not on the ground of disproportionality but on the ground that there is no misconduct on the part of the Respondent No.2, though some of the charges were held to have been proved against the petitioner. She also further contended that the Respondent



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No.1 is very much justified in arriving at a conclusion that the alleged misconduct on the part of the petitioner is only in the matter of procedural aspects and violation of certain rules dealing with the procedure, but no malafides, fraud, undue enrichment or misappropriation of funds etc., were levelled against the petitioner and therefore, the impugned order setting aside the order of punishment of dismissal from service imposed on the petitioner does not require any interference by this court. In support of her contentions, she also placed reliance on a decision of this court in the case of ***“Punjab National Bank Ltd., Zonal office, Chennai – 6 -vs- A.K.Jayaprakash and another”*** reported in **2005 (1) CTC 283**.

9. This court has carefully considered the submissions made on either side and also perused the entire material on record.

10. This court, while entertaining writ petitions against an order passed by the Respondent No.1 in exercise of powers conferred upon him under Sub-Section (2) of Section 41 of the Act, 1947, would be exercising its certiorari jurisdiction. This court is not expected to re-appreciate the evidence as an appellate court. This court can only examine whether the decision making process undertaken by the Respondent No.1/ appellate authority is in

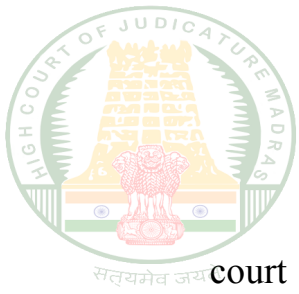


order or not, besides examining as to whether the Respondent No.1/ appellate authority is within his competence to pass the impugned order or not and whether the conclusion of the Respondent No.1 are perverse or not?

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11. As already noted above, the Respondent No.1/ appellate authority, having conducted a detailed enquiry and basing upon oral and documentary evidence placed before it, recorded the factual findings on various charges. The Respondent No.1 has held that the charges 11 to 15 and 17 of the first charge-sheet and charges 1 to 3 of the second charge-sheet as proved against the Respondent No.2. The said charges, according to the petitioner Bank, amounts to misconduct under various regulations of the Lakshmi Vilas Bank Officers' Discipline and Disciplinary Action Regulations 1987.

12. Further, as against the charges that were held to have been proved by the Enquiry Officer namely Charges 4, 7 and 9, the Respondent No.1 had come to the conclusion that the said charges were not proved, and the said findings are under challenge at the instance of the petitioner. Thus, there is a contest before this court against the findings recorded by the Respondent No. 1 on all the the charges either at the instance of the Respondent No.2 or at the instance of the petitioner Bank.



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13. Taking into consideration the limited scope of interference by this court while exercising its certiorari jurisdiction, this court is not inclined to enter into the merits and demerits of the said charges or the findings thereon, which undisputedly require re-appreciation of the evidence placed on record. This court is not expected to act as an appellate authority against an order passed by the Respondent No.1 and is not entitled to re-assess the factual findings that were recorded by the Respondent No.1. Therefore, this court is not inclined to enter into the said arena.

14. The next issue that would fall for consideration is whether the Respondent No.1 is justified in setting aside the order of dismissal dated 19.08.1997, on the ground that the punishment of dismissal was disproportionate to the charges proved against the Respondent No.2 or not?

15. As the Respondent No.1 also found the Respondent No.2 guilty on as many as 8 charges out of 23 charges that are framed against the Respondent No. 2 covered by the two charge sheets, it cannot be said that there was no misconduct on the part of the petitioner. Therefore, it is evident that it is not on the ground that the petitioner had not been found guilty of misconduct, the Respondent No.1 interfered with the order of dismissal. No doubt, the



Respondent No.1 set aside the punishment on the ground that the punishment of dismissal from service was found to be disproportionate to the charges held to have been proved against the petitioner. Whether the Respondent No.1 can interfere with the order of punishment on the ground of dis-proportionality or not is again a matter to be considered. Whether such a power is infact conferred upon the Respondent No.1 under Sub-Section (2) of Section 41 of the Act, 1947, is also a matter which falls for consideration before this court.

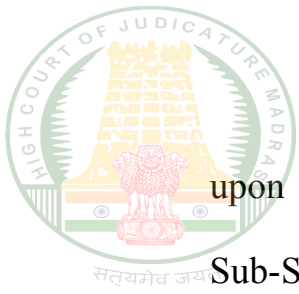
16. Sub-Section (2) of Section 41 of the Act, 1947 reads as under:-

“41.Notice of dismissal

(1) ...

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.”

17. In terms of Sub-Section (2) of Section 41 of the Act, 1947, the person employed shall have a right of appeal to the prescribed authority on two grounds. Firstly, on the ground that there was no reasonable cause for dispensing with the services and secondly, on the ground that the employee had not been guilty of misconduct. Though the valuable right of appeal is conferred upon the employee affected, the scope of appellate power conferred



upon the Respondent No.1 is limited to the twin grounds referred to under Sub-Section (2) of Section 41 of the Act, 1947.

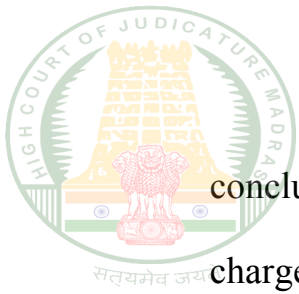
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18. As already observed above, the second ground is not available, as the Respondent No.2 was already found to be guilty on some of charges. Therefore, incidentally the following questions also would emerge for consideration:

(i) Whether there was any reasonable cause for the petitioner Bank to dispense with the services of the Respondent No.2, and was there any such conclusion arrived at by the Respondent No.1/ appellate authority while passing the impugned order ?

(ii) In case, if any such finding is found in the impugned order, whether it is open for this court to interfere with such finding or not ?

19. From the perusal of the impugned order dated 19.01.2012, it is evident that the Respondent No.1, having come to the conclusion that, as many as 8 charges have been proved out of 23 charges, came to the



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conclusion that the punishment of dismissal was disproportionate to the charges proved against the Respondent No.2. For arriving at such a conclusion, the Respondent No.1 has discussed in elaborate, by placing reliance on various precedents and also noticed that the Enquiry Officer has observed that “there was no dishonesty or carelessness on the part of the charge-sheeted officer, but he committed only breach of business rules” and thereby, the Respondent No.1 came to the conclusion that the punishment of dismissal from service was disproportionate to the charges proved against the Respondent No.2.

20. The Respondent No.1, having arrived at a conclusion that there is no justification for the petitioner to dispense with the services of the Respondent No.2, while passing the impugned order, instead of recording a finding to the effect that there was no reasonable cause for dispensing with the services of the Respondent No.2, recorded a finding that the punishment imposed on the Respondent No.2 is disproportionate to the charges proved against the Respondent No.2. Though, the expression used by the Respondent No.1 is slightly different, in effect the same would amount to a conclusion that there is no reasonable cause for dispensing with the services of the Respondent No.2 basing on the misconduct proved against the Respondent



No.2. Once it is concluded that there is no reasonable cause for dispensing with the services of the Respondent No.2, inspite of concluding that there was some misconduct on the part of the Respondent No.2, in the considered view of this court, it is always within the jurisdiction of the Respondent No.1/ appellate authority to interfere with the impugned order wholly or to modify the punishment appropriately commensurate with the misconduct held to have been proved. But, the Respondent No.1, in the instant case, failed to exercise such power in proper perspective, but simply set aside the entire punishment imposed on the Respondent No.2, on coming to the conclusion that there is no reasonable cause to dispense with his services on the ground of dis-proportionality. Once the right of appeal is conferred on the affected party under a statutory provision, it cannot be said that the said appellate authority has limited jurisdiction either to interfere with the order under appeal or refuse to interfere with the order under appeal unless the very provision providing for appeal places such restriction. It is a settled proposition of law that the appellate authority will always have all the powers of the original authority unless it is expressly limited under the very same provision providing for appeal or otherwise. From the perusal of Sub-Section (2) of Section 41 of the Act, 1947, there is nothing to indicate that the appellate power conferred under such provision is circumscribed by any such

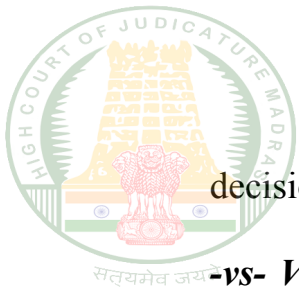


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limitation once it is found that, either of the two grounds is satisfied. Hence, the contention of Mr. Anantha Gopalan, learned counsel for the petitioner on the scope of Sub-Section(2) of Section 41 of the Act, 1947 is liable to be rejected. Acceptance of the same would amount to reading some thing which is not there in the provision, thereby rendering the said provision ineffective and inoperative.

21. In the light of the above, this court is of the considered view that the conclusions arrived by the Respondent No.1 on various charges does not need any interference, in the light of the limited scope of interference by this court while exercising its certiorari jurisdiction. At the same time, the final conclusion arrived at by the Respondent No.1 in setting aside the order of punishment in its entirety on the ground of dis-proportionality cannot be sustained. The Respondent No.1, having found the Respondent No.2 guilty on as many as 8 charges, ought to have modified the punishment, proportionate to the misconduct proved against the Respondent No.2, instead of setting aside the punishment in its entirety.

22. Then, coming to the decisions relied upon by the learned counsel for the petitioner, the same have been carefully considered by this court. The



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decisions relied upon by the petitioner in the cases of “*Union Bank of India -vs- Vishwa Mohan*” reported in (1998) 4 SCC 310, “*State Bank of India -vs- Bela Bagachi*” reported in (2005) 7 SCC 435, “*State Bank of India -vs- Ramesh Dinkar Punde*” reported in (2006) 7 SCC 212 and “*Deputy General Manager and others -vs- Ajai Kumar Srivatsava*” reported in (2021) SCC OnLine SC 4, are concerned, they have no application to the facts of the case on hand, as there is no allegation of lack of devotion, integrity, and honesty, or any allegation of fraud or unjust enrichment etc., against the Respondent No.2 in the instant case.

23. Then, coming to the decision relied upon in the case of “*South India Bank -vs- T.D. Pichuthayappan and others*” reported in AIR 1954 Mad 377, the same has no application to the case on hand, as in the said case, this court was dealing with the case of retrenchment as a result of policy decision, but not on the ground of 'no reasonable cause' for dispensing with the services of the employee therein.

24. Insofar as the decision relied in the case of “*Cranganore Town Co-operative Bank Ltd., -vs- Sankara Velichapad and others*” reported in 1967 (2) LLJ 116 (Ker) is concerned, the said decision has no relevancy to



the case on hand as the provision of law that fell for consideration in the said case and Section 41, which is applicable to the case on hand, are totally different.

25. Then, coming to the decision in the case of ***“Management of Lakshmi Vilas Bank Ltd., -vs- Appellate Authority”*** reported in **2001 (4) LLN 868**, this court interfered with the order passed under Section 41(2) of the Act, 1947, on arriving at a conclusion that the Appellate Authority arrived at conclusions contrary to the material on record and without reference to the seriousness of the charges levelled against the appellant therein. As the same was mostly on considering the facts of the said case and the scope of Section 41(2) has not fell for consideration in the said case, the said decision is of no much help to advance the case of the petitioner.

26. Insofar as the decision of this court in the case of ***“R.Kannabiran -vs- DCL Appellate Authority”*** reported in **2002 (3) LLN 541** is concerned, the scope and ambit of Section 41(2) had not fell for consideration in the said case. But this court only distinguished the decision relied upon by the learned counsel for the petitioner therein, in support of the disproportionality of the punishment rendered in the cases arising out of the

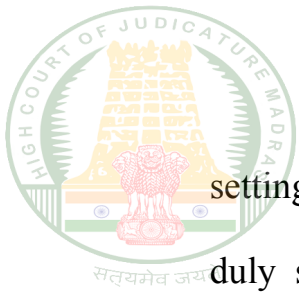


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awards passed by the learned Labour Court, wherein the power under Section 11(A) of the Industrial Disputes Act, 1947 was exercised and observed that there is no such provision like Section 11-A in the Tamil Nadu Shops and Establishments Act, 1947. In other words, the scope of Section 41(2) of the Act, 1947, was not considered by this court in the said decision. Therefore, in the considered view of this court, the decisions relied upon by the learned counsel for the petitioner is of no help to advance the case of the petitioner.

27. Though learned counsel for the Respondent No.2 placed reliance on a decision of this court in the case of ***“Punjab National Bank Ltd., Zonal office, Chennai – 6 -vs- A.K.Jayaprakash and another”*** reported in **2005 (1) CTC 283**, in the considered view of this court, the same also has no application to the case on hand, as the said decision was mostly rendered on the facts and circumstances of the said case.

28. In the light of the above and taking into consideration the long lapse of time, since the date of punishment which relates back to 19.08.1997 and the date of the impugned order i.e., 19.01.2012, this court is of the considered view that it is a fit case where the matter should be put at rest and accordingly, the impugned order is interfered with only to the extent of

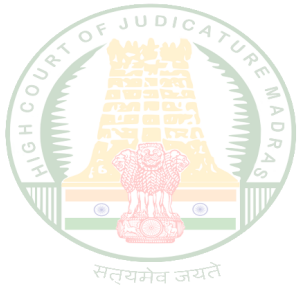


setting aside the entire punishment imposed by order dated 19.08.1997 and duly substituting the said punishment to that of reduction of pay of the Respondent No.1 by two stages. As the Respondent No.2 has already attained the age of superannuation, the Respondent No.2 shall be deemed to have continued in service till the date of attaining the age of superannuation on 05.03.2021 and all his terminal benefits shall be settled. The Respondent No. 2 shall be entitled for all the benefits including continuity of service, however with 50% of backwages. Accordingly, the petitioner Bank is directed to pass appropriate consequential orders and all the monetary benefits payable shall be paid within a period of two months from the date of receipt of a copy of this order.

29. Accordingly, both the writ petitions are disposed of. No costs. Connected miscellaneous petitions, if any, shall stand closed.

26.08.2025

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No



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W.P (MD) Nos.5378 of 2012 and 16552 of



MUMMINENI SUDHEER KUMAR, J.

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To

1. The Deputy Commissioner of Labour (Appeals), Trichy.
2. The Lakshmi Vilas Bank Ltd.,
Personnel Department Administrative Office,
Salem Road, Kasthaparai, Karur – 639 006.

Pre-Delivery Order made in
W.P (MD) Nos.5378 of 2012 and 16552 of 2021

26.08.2025