



WP(MD)No.16205 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.16205 of 2021 and
WMP(MD)Nos.13051 of 2021**

Tamilnadu Mercantile Bank Ltd,
57, V.E. Road,
Tuticorin – 2,
Represented by its General Manager ...Petitioner

Vs

1.The Appellate Authority under
Tamil Nadu Shops and Establishments Act,
(Joint Commissioner of Labour),
Madurai.

2.C.Kanagasabai ...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the the impugned order dated 02.07.2021 passed by the 1st respondent in TNSEA No.1 of 2006 and quash the same as illegal.

For Petitioner	: Mr.M.Jerin Mathew
For Respondent	: Mr.C.Venkateshkumar
No.1	Special Government Pleader
For Respondent	
No.2	:Mr.M.Venkatesan



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ORDER

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The management of Tamil Nadu Mercantile Bank Limited, Tuticorin has filed this writ petition as against the order passed by the Joint Commissioner of Labour, Madurai / the Appellate Authority under the Tamil Nadu Shops and Establishments Act in TNSEA No.1 of 2006, dated 02.07.2021, setting aside the order of dismissal passed as against the 2nd respondent by the petitioner bank.

2.The 2nd respondent was the Branch Manager of the petitioner Bank. On the allegation of causing loss to the petitioner bank, disciplinary proceedings was initiated as against the 2nd respondent, enquiry was conducted and he was dismissed from service on 20.11.2003. In the appeal filed by the 2nd respondent before the appellate authority of the bank, the appellate authority by order dated 19.02.2004 modified the order of punishment into one of discharge and it was also confirmed by the revisional authority by his order dated 22.09.2004. Thereafter the 2nd respondent filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act (in short the Shops Act) before the 1st respondent on 08.11.2005. The 1st respondent by his order



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dated 03.03.2017 allowed the appeal filed by the 2nd respondent.

Aggrieved by that the petitioner bank filed a writ petition before this court in WP(MD)No.7338 of 2017. This court by its order dated 27.02.2018 found that the authority / 1st respondent did not consider the appeal in a proper manner and disposed of it by way of a cryptic order, remanded back the matter for fresh consideration and accordingly, the 1st respondent considered the issue again and passed an order dated 12.07.2021 in TNSEA No.1 of 2006, setting aside the order of discharge. As against the order dated 02.07.2021, the present writ petition has been filed by the petitioner bank.

3.The learned counsel for the petitioner bank submits that the charges levelled as against the 2nd respondent are very serious in nature constituting grave misconduct leading to loss of confidence reposed on the employee as the Branch Manager. A charge memo dated 23.09.2002 was issued to him. He offered his explanation dated 23.10.2002. Further an additional charge memo dated 21.03.2003 was issued and he offered his explanation dated 03.04.2003. Being not satisfied with his explanation, a practicing advocate was appointed as an enquiry officer.



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The enquiry officer conducted enquiry by following due procedure and submitted his enquiry report and findings on 02.07.2003, which was served on the 2nd respondent on 19.07.2003, enabling him to submit his explanation. He also submitted his explanation dated 31.07.2003. A second show cause notice dated 27.09.2003 was issued to him and he submitted his reply dated 11.10.2003. After considering the explanation offered by the 2nd respondent, he was terminated from service by order dated 20.11.2003.

4.The learned counsel for the petitioner further submits that challenging the dismissal order dated 20.11.2003, the 2nd respondent filed an appeal dated 09.12.2003 before the appellate authority of the petitioner's bank and the order of dismissal was modified as that of discharge by order dated 19.02.2004. Thereafter he filed a revision petition before the reviewing authority and the authority by his order dated 22.09.2005 confirmed the order of the appellate authority. Challenging this order, the 2nd respondent filed an application under Section 41(2) of the Shops Act before the 1st respondent. The 1st respondent without considering the case in a proper perspective,



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set aside the the dismissal order dated 22.09.2025, by his order dated 03.02.2017. This order dated 03.02.2017 was challenged by the petitioner bank before this court in WP(MD)No.7338 of 2017 and this court by order dated 27.02.2018, set aside the order passed by the 1st respondent and remitted back the mater to the 1st respondent with a direction to pass fresh orders in accordance with law. Pursuant to the direction, the matter was remitted back to the 1st respondent for fresh consideration, however, the 1st respondent without considering the orders of this court, has again passed a cryptic order dated 02.07.2021 without application of mind and without assigning any independent reason. Therefore, the impugned order is liable to be set aside.

5.The learned counsel further submits that the enquiry was conducted in a fair manner by providing all reasonable opportunities and by following the principle of natural justice. The 2nd respondent in his explanation to the enquiry report, dated 31.07.2003 had not raised any issue about the violation of principle of natural justice, or that the documents sought for by him were not furnished to him or he was not afforded with adequate opportunities or that the report and findings of



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the enquiry officer was perverse in any manner or there was any bias. He further submits that on the charges levelled as against the 2nd respondent, the enquiry officer found that the 1st and 4th transactions were not proved and therefore charge Nos.2,3 and 4 were not proved as against the 2nd respondent. According to him, therefore the domestic enquiry was conducted in a fair manner and it cannot be termed as perverse or without any evidence.

6.He also submits that the 1st respondent by the impugned order has held that charge Nos.1,2,3 and 4 are not proved for the reasons that the borrowers, the cow suppliers, family members of the borrowers, the person who settled the loan amount and other third parties were not cited as witness in the enquiry and were not examined. The 1st respondent in the impugned order has substituted its findings over every charge and held that the dismissal order as bad and even without recording that the findings of the enquiry officer are perverse and this would itself show that the 1st respondent had transgressed its limits and passed the impugned order on its own surmises and caprices.



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7.The learned counsel also submits that in the disciplinary enquiry the standard of proof is only based on the preponderance of probabilities and as such failing to enquire third parties would not vitiate the enquiry. It had also been categorically held by the Hon'ble Apex Court that it is not necessary to examine third parties to prove misconduct committed by the delinquent. Moreover the impugned order itself is contrary to the order passed by this Court in WP(MD)No.7338 of 2017 and this court had remanded the matter only to pass a speaking order but again the 1st respondent had passed a similar order bereft of any reasons. The 1st respondent had set aside the order of punishment only on two grounds that the independent witnesses like borrowers / beneficiaries were not examined in the domestic enquiry and the enquiry officer himself had held that some of the charges levelled against the 2nd respondent as not proved in his findings. As per the ratio laid down by the Hon'ble Apex Court, independent witnesses need not be examined in every departmental proceedings and merely because of the fact that some of the charges were held to be not proved in the domestic enquiry that by itself would not absolve the delinquent of all the other charges. Even if a single charge is proved suitable punishment could be awarded to the delinquent.



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The learned counsel has relied on the following decisions of the Hon'ble Supreme Court and this Court in support of the contentions.

1. *M.L.Singla Vs Punjab National Bank and Another* reported in **(2018) 18 SCC 21**; **2. *The State of Rajasthan & Others Vs Heem Singh***, reported in **2021(2) CTC 332**; **3. *The Deputy General Manager, Tamil Nadu Mercantile Bank Ltd, Vs. R.P.Sinthujaa*** [WP.No.16985 of 2019, dated 23.02.2021]

8. On the other hand, the learned counsel for the 2nd respondent submits that the charge memo issued as against the 2nd respondent itself is a baseless and a false one. The documents relied on in the charge memo were not furnished to him along with the charge memo. He had given his reply to the charge memo denying the allegations and he had also given his objection to the 2nd show case notice. However, the enquiry officer without considering his explanation, has given his findings that the charges are proved. Further the 2nd respondent has given his explanation on the enquiry report and findings as against him, that the principle of natural justice was not followed, since the documents relied on by the enquiry officer were not provided to the 2nd respondent to put



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forth his case. The disciplinary authority without considering his objections on the findings of the enquiry officer, has passed the order of dismissal. Challenging the order of dismissal, the 2nd respondent filed an appeal and the order of dismissal was modified as that of the discharge. He has also filed a revision petition before the revisional authority of the petitioner bank and he has confirmed the orders of the appellate authority without considering his reply. Therefore, the 2nd respondent has filed an appeal under Section 41(2) of the Shops Act before the 1st respondent in the year 2006 itself. The 1st respondent allowed the appeal and the petitioner bank challenged the same before this court. It was remanded by this court to the 1st respondent. Before the 1st respondent, the 2nd respondent has filed an interlocutory application seeking certain documents from the petitioner bank. Despite the orders of the 1st respondent directing the petitioner bank to produce all the documents, the petitioner bank has not produced all the documents, but produced only some documents, which are in their favour. The learned counsel further submits that the Hon'ble Supreme Court in a number of judgments has held that the material documents related to the charges have to be produced with the author of the documents.



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9.He further submits that the petitioner bank has failed to note that the loans were fully secured with collateral security and the loan accounts were closed after its repayment. The withdrawing of the loan amount and depositing the said amount to some other accounts by the loanee, would not constitute misconduct on the part of the 2nd respondent and the 2nd respondent has no role in the same. The petitioner bank has not explained how the pecuniary loss has been caused to the bank due to the disbursement of loan by the 2nd respondent. The petitioner bank without any material has alleged that a pecuniary loss of Rs.77,968/- has been caused to the bank. Therefore, the 1st respondent has considered all the charges, the documents produced on either side and has rightly set aside the order of dismissal. Therefore, there is no reason to interfere with the impugned order. The learned counsel has relied on the following decisions in support of his contention:

1.Bilaspur Raipur Kshetriya Gramin Bank and another Vs Madanlal Tandon reported in ***(2015) 4 MLJ 487 (SC)***.

2.Tamilnadu Mercantile Bank Limited, Tuticorin Vs The Deputy Commissioner (Labour) and another [WP.No.8980 of 2003, dated 23.01.2009]



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10.This court has considered the rival submissions made and also perused the materials placed on record.

11.The 2nd respondent is the then Branch Manager of the petitioner bank. He was issued with the charge memo dated 23.09.2002 and 21.03.2003, domestic enquiry was conducted and the enquiry officer submitted his report on 02.07.2003. This enquiry report was served on the 2nd respondent and he had also furnished his explanation to the enquiry report on 31.07.2003. Thereafter the 2nd show cause notice was issued on 27.09.2003 and the 2nd respondent also submitted his explanation to the 2nd show cause notice on 11.10.2003. Thereafter the 2nd respondent was terminated from service by order dated 20.11.2003, which was challenged by way of an appeal before the appellate authority of the petitioner bank. The appellate authority by his order dated 09.02.2004 has modified the order of dismissal into one of discharge from service. The petitioner also preferred revision petition before the revisional authority of the petitioner bank and the revisional authority confirmed the order of the appellate authority. Thereafter the petitioner preferred an appeal before the 1st respondent under Section 41(2) of the



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Shops Act. The 1st respondent has allowed the appeal by order dated 03.02.2007 and the same was challenged by the petitioner bank by way of a writ petition before this court in WP(MD)No.7338 of 2017 and this court by order dated 27.02.2018 has set aside the earlier order passed by the 1st respondent as follows:

“3. This court went through the entire materials on record. It is seen that the order of the appellate authority runs to 109 pages. Pages 1 to 104 contain a mere narration of the antecedent facts. The operative portion of the order is spread over pages 105 to 110. Even there it is seen that the charges are extracted and by cryptic order, the issue has been answered in favour of the employee. By the impugned order, the appellate authority modified the punishment from dismissal to one of discharge. There is absolutely no discussion of the contention raised by the management. There is not even a single reference to the reasoning of the enquiry officer.

4.This court is of the view that the order of the appellate authority is totally perverse. Therefore, the order impugned in this writ petition is quashed and the matter is remitted to the file of the first respondent authority to pass fresh orders in accordance with law. It is needless to mention that the appellate authority will hear



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the management as well as the employee and after discussing the entire materials on record, proceed to pass orders in accordance with law.

5.The writ petition is allowed. No costs. Consequently connected miscellaneous petition is closed.”

12.Before the 1st respondent in the appeal, the petitioner bank also filed an interlocutory application in the year 2010 to decide the fairness of the enquiry as a preliminary issue in IA.No.4 of 2010 and the 1st respondent decided to hear the same along with main appeal. This order of the 1st respondent was challenged by way of writ petition by the bank in WP(MD)No.13236 of 2010 and this court by its order dated 28.01.2011 had dismissed the writ petition that the fairness of the enquiry could also be decided along with main appeal.

13.It is seen that in the present case, the 1st Respondent has not taken a decision with regard to the preliminary issue of fairness of enquiry in the impugned order. Insofar as the decision on the preliminary issue is concerned, the Hon'ble Supreme Court in ***M.L.Singla Vs.***



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Punjab National Bank and Another, reported in **(2018) 18 SCC 21** held

that Labour Courts are obligated to decide whether the domestic enquiry was legal and proper as a preliminary issue. If the domestic enquiry was legal and proper, the Labour Court can move to the question of whether the punishment imposed is proportionate. On the other hand, if the Labour court is of the view that the principles of natural justice were violated during the domestic enquiry, then the Labour Court can decide whether the charges are made out or not on merits and move on to the aspect of punishment. Hence, the Labour Court is expected to take a call on this preliminary issue before moving on to the merits of the case. The relevant portions are extracted as under:

“15. The first error was that it failed to decide the validity and legality of the domestic enquiry. Since the dismissal order was based on the domestic enquiry, it was obligatory upon the Labour Court to first decide the question as a preliminary issue as to whether the domestic enquiry was legal and proper.

16. Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.

17. If the answer to the question on the preliminary issue was that the domestic enquiry is legal



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and proper; the next question to be considered by the Labour Court was whether the punishment of dismissal from the service is commensurate with the gravity of the charges or is disproportionate requiring interference in its quantum by the Labour Court.

.....

20. If the Labour Court had come to a conclusion that the domestic enquiry is illegal because it was conducted in violation of the principles of natural justice thereby causing prejudice to the rights of the employee, Respondent 1 Bank was under legal obligation to prove the misconduct (charges) alleged against the appellant (employee) before the Labour Court provided he had sought such opportunity to prove the charges on merits.

21. The Labour Court was then under legal obligation to give such opportunity and then decide the question as to whether Respondent 1 Bank was able to prove the charges against the appellant on merits or not.....”

14.The requirement of deciding the preliminary issue as to the fairness of the trial was also made applicable to the appeals filed under the Tamil Nadu Shops and Establishments Act by this court in WP.No. 16985 of 2019 vide order dated 23.02.2021 by following the decision in



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M.L.Singla's case cited supra and the relevant portion is extracted as under:

“4.It is well settled that in any dispute against the punishment of dismissal or discharge on the basis of a domestic enquiry, it is incumbent upon the Appellate Authority or the Labour Court or the Tribunal or the Board to decide as to whether the domestic enquiry conducted by the Management is fair and proper or not? If it is decided the conduct of enquiry is fair and proper, the next procedure is to see whether the punishment imposed is proportionate or disproportionate to charges framed. If the domestic enquiry is held to be not fair and proper, then, on request made by the employer either by way of pleadings or by oral request or on an application filed, an opportunity shall be given to the Management to adduce additional evidence to prove the charges. After analysing the evidence and materials, the matter can be decided on merits as to whether to impose the punishment or to set aside the disciplinary proceedings.

5. But in the instant case, an observation has been made that the issue can be decided only after looking into the documents relating to the domestic enquiry. If that is so, the authority should have taken up the matter for hearing and decided the issue one way or other, but



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dismissed the application without any decision. The order as such is vague and unsustainable.

6. Therefore, a direction is given to the Appellate Authority to take up the issue of fairness of the domestic enquiry as a preliminary issue and thereafter, to proceed with the matter in accordance with law. It is open to the respondent to place all his objections before the Appellate Authority.”

15. Further the 1st respondent has held that the charges as against the 2nd respondent were not proved because the borrowers, cow suppliers, family members of borrowers and other third parties were not examined as witnesses in the domestic enquiry. It is a settled position that the standard of proof required in domestic enquiries is the preponderance of probabilities. Since domestic enquiries are governed by the rule of preponderance of probabilities, the technical rules of evidence does not apply and it is not necessary to examine every third party witness. In ***State of Haryana and another vs. Rattan Singh [(1977) 2 SCC 491]***, the Hon'ble Supreme Court has held as follows:



*“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible.....The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. **However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement.** 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. Absence of any evidence in support of a ending is certainty available for the court to look into because it amounts to an error of law apparent on the record.....

*5.Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. **We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid.** Likewise, the revaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal in conclusion, we do not think the courts below were right in over-turning the finding of the domestic tribunal.”*

16.Considering the fact that the 1st respondent has not decided the preliminary issue on the fairness of enquiry and also it is not necessary to examine all the third party witnesses in domestic enquiries, this court is inclined to set aside the impugned order.



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17.This Court without expressing anything on the merits of the case, remits the matter back to the 1st respondent to decide it afresh in the light of the above observations, by providing opportunities to either parties and also by considering the documents referred by them in accordance of law, within a period of six months from the date of receipt of a copy of this order. This writ petition is disposed of accordingly. No costs. Consequently connected miscellaneous petition is closed.

28.11.2025

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To

The Appellate Authority under
Tamil Nadu Shops and Establishments Act,
(Joint Commissioner of Labour),
Madurai.



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B.PUGALENDHI.J.,

DSK

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