

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2012

CORAM:

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.10311 of 2008 and

M.P.No.1 of 2008

The Management of
Indian Bank,
37, Rajaji Salai,
Chennai -1.

Rep. By its Assistant General Manager

... Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court, Chennai -6.

2.Indian Bank Employees Association
Rep. By its General Secretary,
Old No.197, New No.250
Lingi Street, Chennai - 600 001.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari, calling for the records of the first respondent in I.D.No.423/2004 and quash its Award dated 28.12.2006.

For Petitioner : Mr.V.Karthik
M/s.T.S.Gopalan and Co.,
For Respondents : Mr.V.Ajoy Khose for r2

सत्यमेव जयते
O R D E R

The writ petition is filed by the Management, seeking to challenge an Award passed by the Central Government Industrial Tribunal cum Labour Court (for short CGIT) made in I.D.No.423 of 2004 dated 28.12.2006. By the impugned Award, the CGIT held that the punishment of compulsory retirement given to the workman represented by the second respondent Union was not justified and that he was entitled for reinstatement into service with continuity of service, backwages and other attendant benefits.

2. When the writ petition came up on 24.04.2008, notice of motion was ordered. Subsequently, an interim stay was granted on 03.11.2008 and it was extended on two occasions and it continued till

08.12.2008. Subsequently, the writ petition was admitted on 17.02.2009. But no interim order was granted.

3. When the matter came up on 25.10.2010, the writ petition was referred to resolution of dispute by the permanent Lok Adalat. As the matter could not be resolved before the Lok Adalat, it was directed to be posted before the Court by the Lok Adalat on 31.01.2011 for disposal on merits.

4. On notice from this Court, the second respondent has filed a counter affidavit dated 29.10.2008. Enquiry proceedings were filed by the Management in the form of additional typed sets.

5. Heard the arguments of Mr.V.Karthik of M/s.T.S.Gopalan and Co., learned counsel for the Management and Mr.V.Ajoy Khose, learned counsel appearing for the second respondent Union.

6. The case of the second respondent Trade Union was that the workman M.Sukumaran, joined the services of the petitioner Bank as Clerk/Shroff on 30.03.1976. He had put in 25 years of long service. Lastly, he was engaged in Hosur Branch from July 1989. As the Permanent payment Cashier was on leave on 05.01.2000, the workman Sukumaran was assigned work in Payment Counter. In the receipts counter No.1, Mrs.Chandrika Nagarajan was working. At the commencement of that day, the said Chandrika informed the workman that she wanted to finish the work early and requested the workman to exchange the unstitched sections for the stitched sections for making payment. She asked him whether any unstitched sections were required by him whenever she had them for exchange and she was exchanging the same as and when needed. For these exchanges, no recording was done in the register as there was no practice of such recording since it was not exchange of cash from the receipt counter to the payment counter. There was no instructions from the Management to maintain such register and there was no office order or direct instruction to maintain the register. Only one cash movement register was maintained and that too to record the movement of cash from cash safe to the cash counter.

7. On 05.01.2000, the said Sukumaran entered in the movement register the cash taken out from the Cash Safe. In the morning, one Sivaprakash, staff of the same branch wanted to have exchange of Rs.500/- denominations. The workman concerned told him that whenever he received the denomination in Rs.500/-, he would give him. Around 12.00 noon, the workman concerned got a receipt of Rs.20,000/- with Rs.500/- denominations of 40 pieces. Immediately, the workman concerned called Sivaprakash and gave him Rs.50/- x 400/- pieces and Rs.100 x 20 pieces and got the exchange of Rs.500/- x 44 pieces from the workman. The workman concerned made the payments for the day with the cash taken from the safe at the commencement of the day and also the cash taken from the safe twice thereafter, including the cash

received from Sivaprakash in exchange. The workman concerned closed his work by 3.15 p.m and accounted and tallied the amount which was entrusted on 05.01.2000.

8. However, the Cashier Chandrika, who was entrusted work in receipt counter No.1 could not tally and account for the amounts received by her on 05.01.2000 and she reported a shortage of Rs.25,000/-. Though the business hours were over by 2.30 p.m, she could not tally the accounts with the cash received for the day and she took time upto 4.45 p.m to close the accounts. Only thereafter she reported shortage of Rs.25,000/- to the Branch Manager. The Branch Manager instructed Tmt.Agalya and Mr.David Arokiasamy to verify the transactions in receipt counter No.1. They also verified and confirmed the shortage at receipt counter No.1. Further, they also reported about non-authentication of the entries including the denominations in several vouchers and also found that there were no entries at all about the denominations in some vouchers. At the time of verification, the said Chandrika informed the officials as if the workman concerned did not return Rs.25,000/- given for exchange. When the officials asked her as to whether she has maintained any record to show the amount given to the workman and that the workman did not return the amount, she showed the noting said to have been made by her at 4th page of her rough cash book and the rounding over the noting (50 x 5). But the officials informed her that it was not sufficient to prove the payment made to Sukumaran. The officials also verified the payment counter looked after by Sukumaran and found the cash was tallying with the accounts. When the Branch Manager asked both cashiers after the oral confirmation by the two officials about the shortage of Rs.25,000/-, Mrs.Chandrika Nagarajan reiterated her stand and Sukumaran informed that whatever amounts received from Chandrika was returned back immediately in stitched sections and that the allegation of Mrs.Chandrika that he did not return Rs.25,000/- was not correct. Thereafter, the Branch Manager asked both of them to submit denomination wise chart for the entire transaction. At that time, the workman concerned informed the Branch Manager that he had exchanged the amounts with different denominations to V.Sivaprakash in the morning and also with other customers and hence, denomination chart would not tally with the denominations mentioned in the payments and receipts. Since the shortage had occurred in the receipt counter handled by Chandrika, the same could not be traced out with the available documents. Mrs.Chandrika Nagarajan admitted the shortage and gave voucher for Rs.25,000/-.

9. Subsequent to the event, it transpires that the said Chandrika gave a complaint to the Regional Manager alleging that she gave Rs.4,75,000/- to Sukumaran for exchange of stitched sections but Sukumaran returned only Rs.4,50,000/- and did not return the balance of Rs.25,000/-. Based on the said complaint, the Senior Manager, Regional Officer, Dharmapuri came to the Hosur Branch and enquired about the shortage that took place on 05.01.2000. When he asked as to

why the said cash denomination did not tally, Sukumaran told him that since he exchanged with Rs.500/- notes for Rs.22,000/- with Sivaprakash on 05.01.2000 morning and also reiterated that he did not receive Rs.25,000/- from Chandrika Nagarajan. Thereafter, the Zonal Vigilance Officer, Coimbatore also came to the Branch and enquired about the shortage.

10. After enquiry by the Zonal Vigilance Officer, Coimbatore, a memo dated 21.01.2000 was issued to both Sukumaran as well as Chandrika Nagarajan as to why disciplinary action should not be initiated for the shortage that took place on 05.01.2000. The workman gave his explanation and pointed out that he did not receive RS.25,000/- in Rs.50 denomination as he was having sufficient denomination in Rs.50/- to make payment to the customer by name B.R.Ramachandran. Yet another memo dated 03.02.2000 was issued and the workman was placed under suspension on 21.01.2000. The workman submitted his reply on 01.03.2000 denying the allegations. However, a charge memo dated 06.03.2000 was issued and straightaway enquiry was ordered.

11. The charges levelled against the workman were :-

i) He failed to maintain the cash movement register, the source of shortage of Rs.25,000/- that took place in receipt counter No.1 on 05.01.2000 which could not be traced out and hence he was negligent.

ii) He received Rs.25,000/- from Chandrika Nagarajan at 11.30 a.m on 05.01.2000 in 50 x 500 denominations to make payment to one B.M.Ramachandran but refused to return the same when Mrs.Chandrika demanded.

iii) Instead of holding excess of Rs.25,000/- in his account, he falsely shown as if the account was tallied with an ulterior motive to conceal the exchange of Rs.25,000/-.

12. In the enquiry, six witnesses were examined on the side of the Management and 10 documents were filed and marked as Exs.M1 to M10. On the side of the workman, three witnesses were examined including himself. Preliminary objection was also raised regarding the conduct of the enquiry. Without considering the defence of the workman, the Enquiry Officer gave a finding on 22.12.2000 holding that the workman was guilty of all the three charges. Thereafter, by a memo dated 29.12.2000, explanation was called for on the findings of the Enquiry Officer. The workman submitted his explanation on 29.01.2001 and pointed out the perversity of the findings. But however, the Disciplinary Authority accepted the findings of the Enquiry Officer and proposed the punishment of dismissal by his show cause notice dated 24.03.2001. The personal hearing on the second show cause notice was fixed on 12.04.2001. The workman concerned submitted his written submissions. However, the Disciplinary

Authority by an order dated 17.04.2001 imposed the punishment of warning in respect of the first charge and dismissal in respect of Charges two and three.

13. The workman preferred an appeal dated 31.05.2001 to the General Manager, who was the Appellate Authority. Personal hearing was also given on 13.08.2011. After long lapse of time, when he did not receive any reply from the Appellate Authority, he wrote a letter dated 07.05.2002 and requested to pass orders on his appeal. Instead of passing orders on the appeal, the Bank appointed one General Manager as Appellate Authority and by a letter dated 19.08.2002 fixed the personal hearing on 28.08.2002. The workman wrote a letter dated 23.08.2002 stating that personal hearing was already conducted by another Appellate Authority. Since the first Appellate Authority was in favour of the workman during the first personal hearing, the Bank had cunningly appointed the second authority to get a different opinion. No orders were passed on his representation. However, the Appellate Authority appointed afresh, by an order dated 24.03.2002 modified the punishment into one of compulsory retirement.

14. It was thereafter, the Trade Union, to which the workman belonged namely the second respondent took up his cause and raised an industrial dispute as collective dispute before the Assistant Labour Commissioner, Central by an application dated 28.05.2003. Since no settlement was possible, the Conciliation Officer submitted his failure report dated 11.08.2004 to the Government of India. The Government of India through their Ministry of Labour by their order of reference dated 20.10.2004 referred the dispute relating to punishment of compulsory retirement given to the workman M.Sukumaran for adjudication by the CGIT, the first respondent. The CGIT registered the dispute as I.D.No.423 of 2004 and issued notice to both sides. The Association filed a claim statement dated 05.03.2005. The Management filed a counter statement dated Nil My 2005.

15. Before the CGIT, no oral evidence was let in on both sides. On the side of the workman, 14 documents were filed and marked as Exs.W1 to W14. On the side of the Management, 20 documents were filed and marked as Exs.M1 to M20.

16. On the basis of the documents produced, the CGIT came to the conclusion that the approach of the Bank that only fifty rupees denomination was given on exchange and it was not returned by concerned employee is without any basis and they have built up the case only on the allegations made by Chandrika Nagarajan. In fact the Bank had come to erroneous conclusion that fifty rupees denomination alone was exchanged between the concerned employee and Mrs.Chandrika Nagarajan and this approach was perverse. There is no proof with regard to exchange of notes and when there is no proof how much amount has been exchanged between the concerned employee and

Chandrika Nagarajan, it cannot be said that only fifty rupees denomination alone was exchanged and that too Rs.25,000/- was given by her for exchange is without any basis. The Bank had approached the customers with a pre-concluded ideas and had obtained the evidence. For that the Bank had relied on the denomination chart, which cannot be a true one without any proof that no exchange independently cannot be done in the circumstances. Therefore, it found that fifty rupees denomination alone was exchanged between the concerned employee and Mrs.Chandrika Nagarajan was false. Further, it also referred to the evidence of Sivaprakash, a co-employee, who had also exchanged fifty rupees denomination in exchange of Rs.500 notes. But the Enquiry Officer rejected the said evidence without any basis. The evidence of the workman and Sivaprakash were consistent. The allegation that the said Sivaprakash and the concerned employee was in the R-2 union and the said Chandrika Nagarajan was in a rival union and therefore, his evidence was an interested one is an after thought. Even at the time of giving explanation, the concerned employee had given explanation that Sivaprakash approached him for exchange of notes and he had also done the same. The statement of B.M.Ramachandran that he gave statement after the receipt of money cannot be a true statement because shortage of money was found out only at 4.30 p.m and no one had approached the said B.M.Ramachandran at that time. The Vigilance Officer after a week's time had approached Ramachandran and obtained evidence. Therefore, it cannot be said that Ramachandran, who was an outsider gave a true statement with regard to exchange. Therefore, the finding given by the Enquiry officer was perverse and without any legal basis.

17. Therefore, the CGIT came to the conclusion when there is no proof to show that only fifty rupees denominations were exchanged between the concerned employee and Chandrika and that was not returned by him was without any substance. Preparing denomination chart according to their whims and fancies clearly proved that the conclusion was only to prove the workman guilty. It was in that view of the matter, the CGIT set aside the punishment of dismissal.

18. Mr.V.Karthik, learned counsel appearing for the petitioner Management took this Court to the minutes of enquiry proceedings filed as typed set of papers to contend that the approach of the CGIT was erroneous and the witness Ramachandran had clearly talked about the said Chandrika receiving the notes in exchange from the concerned workman.

19. However, this Court is not persuaded to disagree with the findings recorded by the CGIT. In this case, direct evidence was not available and at the maximum, the evidence of Ramachandran was only to support the theory that certain amounts were received by the said Chandrika from the workman Sukumaran. As rightly held by the CGIT, accounts were tallied only in the evening and therefore, unofficial exchanges between the two counters were not accounted. Further, the

evidence of Sivaprakash, another employee cannot be outrightly rejected. In the absence of the Bank proving that amounts were received from Chandrika by Sukumaran and that was not accounted and he had secreted the amount by direct evidence, and by mere assumptions and presumptions, the workman cannot be said to be guilty of the said charges. This is especially when the workman had rendered 25 years of service and there is no prior misnomer attributed against him. As rightly held by the CGIT, the approach of the Bank was to somehow hold the workman guilty and thereafter get document to suit the allegation made by them. The fact that Sukumaran and Chandrika belong to two rival trade unions can work both ways. Hence, the benefit of doubt should have been given to the workman who was accused of a serious charge.

20. In the present case, even in the year 2008, the workman was 54 years old and by now, he would have reached the age of superannuation. Therefore, there was no necessity to reinstate the workman. The backwages for the period of his dismissal till his actual age of retirement cannot be denied to the workman. He is also entitled to get all terminal benefits as if no penalty was suffered by him during the course of his employment.

21. The writ petition stands dismissed with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

1.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court, Chennai -6.

2.The General Secretary,
Indian Bank Employees Association
Old No.197, New No.250
Lingi Street, Chennai - 600 001.

+1 CC to M/S.T.S.Gopalan & Co., SR 60990

+1 CC to Mr.V.Ajoy Khouse Advocate SR 60851

W.P.No.10311 of 2008

MS (CO)

PKS

17/10/2012