

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-9-2013

CORAM

THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.A.No.1178 & 1179 of 2011

K. Gunasekaran ... Appellant in both writ appeals/
2nd Respondent in WP No.13094/2002/
Petitioner in WP 11/2003

Vs.

1. The Management of the Nilgiris,
District Plantation Worker's
Co-Operative Credit Society Ltd.,
rep.by its Secretary,
Coonoor,
The Nilgiris. ...Petitioner in WP 13094/2002

2. The Presiding Officer,
Labour Court,
Coimbatore. ... Respondents in both writ appeals/
1st Respondent in WP 13094/2002/
Respondents in WP No.11/2003

W.A.No.1178 of 2011 is preferred under Clause 15 of the Letters Patent against the order of the learned single Judge dated 15.9.2009 made in W.P.No.13094 of 2002.

Petition presented under Article 226 of the constitution of India to issue a writ of Certiorari to call for the records of the first respondent herein, pertaining to the award dt.9.8.2001 made in I.D.No.330/97 quash the same.

W.A.No.1179 of 2011 is preferred under Clause 15 of the Letters Patent against the order of the learned single Judge dated 15.9.2009 made in W.P.No.11 of 2003.

Petition presented under Article 226 of the constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the Award passed in I.D.No.330/97 dt. 9.8.2001 of the second respondent and quash the portion of the award depriving entire backwages to the petitioner and consequently

direct the first respondent to pay the petitioner backwages and other attendant benefits, award costs.

For Appellant in both the appeals : Mr.M. Sreedhar
for Mr.A.Bobblie

For 1st Respondent : Mr.R.Ramesh
for M/s.Srinath Sridevan

2nd Respondent : Labour Court

COMMON JUDGMENT

N.PAUL VASANTHAKUMAR, J.

W.A.No.1178 of 2011 is preferred against the order made in W.P.No.13094 of 2002, which was filed by the Management of the Nilgiris District Plantation Worker's Co-Operative Credit Society Ltd., Coonoor, seeking to quash the award made in I.D.No.330 of 1997 passed by the Labour Court, Coimbatore, insofar as ordering reinstatement of the appellant, which was ordered by the learned single Judge.

2. W.A.No.1179 of 2011 is preferred by the workman against the order made in W.P.No.11 of 2003, challenging the very same award, insofar as denying backwages and other attendant benefits, which was dismissed by the learned single Judge.

3. As the issue arises in both the writ appeals are common, these writ appeals are heard and disposed of by this common judgment.

4. Heard Mr.M.Sreedhar, learned counsel appearing for the appellant/workman and Mr.R.Ramesh for the first respondent/Management.

5. The case of the appellant K.Gunasekaran is that he was appointed as Office Assistant in the Management (Co-Operative Society) on 8.11.1983 and he was promoted as clerk with effect from 1.4.1993. He was placed under suspension on 2.8.1993 and a charge memo containing three charges was issued on 27.9.1993. The charges were denied by the appellant. Domestic enquiry was conducted and a finding of guilt was recorded by the Enquiry Officer. Accepting the findings of the Enquiry Officer, the Management imposed a penalty of dismissal from service by order dated 22.1.1994. Against the said dismissal order, workman raised ID.No.330 of 1997 before the Labour Court, Coimbatore, and in the Labour Court, no oral evidence was let in, though documentary evidence filed by the Workman numbering 21 and by management numbering 15, were marked. The Labour Court, considering the preliminary issue raised before it, gave a finding

that the domestic enquiry was conducted in a fair and proper manner and the said finding given in preliminary award was not questioned. The Labour Court also gave a finding that the three charges levelled against the workman were clearly proved. The Labour Court in exercise of the powers conferred under Section 11A of the Industrial Disputes Act, 1947, interfered with the punishment of dismissal as it was unproportionate, and set aside the punishment and ordered reinstatement without backwages, but with continuity of service, by award dated 9.8.2001. Aggrieved over ordering reinstatement with continuity of service, the management filed writ petition, and insofar as denial of backwages, workman filed writ petition as stated supra.

6. The learned single Judge having noticed the gravity of charges, findings recorded by the Enquiry Officer, as well as the findings recorded by the Labour Court stating that the charges were proved and enquiry was conducted in a fair and proper manner, held that the charges of misappropriation having been proved, ordering reinstatement is uncalled for, and set aside the award insofar as ordering reinstatement with continuous service. The writ petition filed by the workman claiming backwages was also dismissed. The said orders are challenged by the workman contending that he is a peon, who cannot be held responsible for misappropriation and higher officials were let off or imposed punishment in a lenient manner, and dismissing him from service is discriminatory and unproportionate to the gravity of the charges.

7. The learned counsel appearing for the Management on the other hand submitted that the learned Judge was right in allowing the writ petition filed by the Management as the charges of misappropriation were clearly proved during domestic enquiry as well as before the Labour Court, and the Labour Court was not justified in interfering with the punishment on the ground of proportionality, as once misappropriation is proved, punishment of dismissal can be the only punishment and the said issue is already settled. The learned single Judge applying the said principle rendered his decision and the same is justified.

8. We have perused the charges, enquiry report, order of punishment, order of the Labour Court, and the order of the learned single Judge.

9. The charges framed against the appellant, which are found to be proved by the Enquiry Officer and Labour Court, read as follows:

- (i) By creating records as though seven members of the Society held monthly recurring deposits, he prepared bogus vouchers, forged the signatures of the members and misappropriated a sum of Rs.33,550.25, in connivance with the Accountant Vasudevan;

(ii) After obtaining permission of the Accountant Vasudevan, he prepared bogus vouchers, forged the signatures of the members and misappropriated the dividend amounts due to some deceased members of the Society to the tune of Rs.10,120/- and the amounts due to some surviving members to the tune of Rs.976.31, and

(iii) He prepared a bogus voucher, forged the signature of one borrower by name Amalraj and misappropriated a loan amount of Rs.2,500/- sanctioned to him.

For the said charge memo issued on 27.9.1993, the appellant gave his explanation on 4.10.1993 stating that one P.Vasudevan, who was accountant of the Society was the person involved in the crime and the Society should proceed against the said Vasudevan, and initiating proceedings against the appellant is unjust.

10. Domestic enquiry was conducted and a clear finding was recorded to the effect that the appellant, while working as Cashier of Kothagiri Branch of the Society, falsified the recurring deposit accounts of some of the members by making entries in their accounts to show their amounts were deducted by the respective management from their wages and forwarded to the Branch to be credited in their accounts, and later, in collusion with the then Accountant Vasudevan, withdrew such account by using forged signatures and a total sum of Rs.33,550.25 was misappropriated by the appellant in the above bogus transaction. Charge No.2 is falsifying the accounts of the Branch in respect of the dividend account of certain members, who were no more, by preparing false accounts and obtained sanction from the Accountant and misappropriated a sum of Rs.10,126/- in connivance with the Accountant Vasudevan. The third charge was sanctioning of Rs.2,500/- to be given as surety loan to one Amalraj on the basis of the Special Officer's sanction order dated 26.10.1991 and the concerned individual received payment on 1.11.1991. The appellant prepared false voucher on 7.11.1991 with the forged signature of the said Amalraj with bogus thumb impression of the surety and misappropriated the said amount by manipulating the accounts from the Accountant viz., Vasudevan. Enquiry Officer found that bogus vouchers were prepared by the appellant and the said documents were marked as exhibits. The entries in the personal ledger of the recurring deposit accounts were made by the appellant as a cashier, and therefore he is squarely responsible for the disbursement of the amount. The Enquiry Officer ultimately gave a finding that the charges levelled against the appellant have been satisfactorily proved.

11. A show cause notice was issued with regard to the proposed penalty and after considering the reply, the management having lost confidence of the appellant, passed an order of dismissal on

23.1.1994. The Labour Court in its award gave a clear finding that enquiry was conducted in a fair and proper manner and the charges were proved. However, the Labour Court interfered with the punishment of dismissal on the ground that the punishment of dismissal is unproportionate to the charges proved, and ordered reinstatement with continuity of service without backwages.

12. The learned single Judge set aside the said award by negating the defence taken by the workman that he acted under the instructions from the accountant Vasudevan, which cannot be appreciated in a writ proceeding, or departmental proceeding, which may have some effect before the criminal Court. In the cross-examination the appellant has stated that he did the said delinquencies on the instructions of Accountant Vasudevan. The learned single Judge also disbelieved the argument that the appellant was used as a tool by the Accountant Vasudevan on the basis of the findings rendered by the Enquiry Officer as well as the Labour Court. Insofar as the proportionality of the punishment, the learned single Judge held that the past record of the service of the appellant as peon was of no relevance and he was promoted as Clerk only in April 1993, and he immediately indulged in a serious misconduct, and therefore the management having lost confidence was justified in dismissing the appellant.

13. The Honourable Supreme Court in the decision reported in (2006) 6 SCC 794 (Union of India v. K.G.Soni) in paragraphs 14 and 15 held thus,

"14. the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct

the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

(Emphasis Supplied)

Again in (2006) 1 SCC 63 (Karnataka Bank Ltd. v. A.L.Mohan Rao) and in several other decisions the Apex Court held that it is not for the courts to interfere in cases of gross misconduct if the Disciplinary Authority's decision is based on Enquiry Officer's report, which has been conducted in a fair and proper manner and a misconduct is proved.

14. Once the Banking establishment has lost confidence on its staff in the clerical cadre, whether reinstatement can be ordered to such staff, who is dealing with public money, was considered by the Supreme Court in the decision reported in 2007 AIR SCW 4136 : JT 2007 (8) SC 588 (Ramesh Chandra Sharma v. Punjab National Bank & Another). In paragraph 20 it is held thus,

".....

Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity. A necessary implication which must be engrafted on the contract of service is that the servant must undertake to serve his master with good faith and fidelity. In a case of loss of confidence, reinstatement cannot be directed. Granting such an employee the relief of reinstatement would be "an act of misplaced sympathy which can find no foundation in law or in equity." (Vide Air India Corporation, Bombay vs. V.A.Ravellow, AIR 1972 SC 1343; The Binny Ltd. vs. Their Workmen, AIR 1973 SC 1403; Kamal Kishore Lakshman vs. Management of M/s.Pan American World Airways Inc & Ors., AIR 1987 SC 229; Francis Kalein & Co. Pvt. Ltd., vs. Their Workmen, AIR 1971 SC 2414; Regional Manager, Rajasthan SRTC Vs. Sohan Lal, (2004) 8 SCC 218; and Bharat Heavy Electricals Ltd. Vs. M.Chandrashekhar Reddy & Ors., 2005 AIR SCW 1232).

In Kanhaiyalal Agrawal & Ors. Vs. Factory Manager, Gwalior Sugar Co. Ltd. (2001) 9 SCC 609, the Hon'ble Supreme Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act

which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved." "

(Emphasis Supplied)

The same is the view taken by the Division Bench of this Court in W.A.No.1861 of 2009, by Judgment dated 21.6.2010. The said writ appeal was preferred against the order of one of us (N.Paul Vasanthakumar, J.) made in W.P.No.5387 of 2001 dated 27.8.2009.

15. The issue of exercise of discretion under Section 11A of the Industrial Disputes Act, 1947, by the Labour Court came up before the Hon'ble Supreme Court in the decision reported in AIR 2009 SC 2528 (Divisional Manager, Rajasthan S.R.T.C. v. Kamruddin) wherein it is held that though power is available to the Labour Court/Industrial Tribunal in terms of Section 11A of the Industrial Disputes Act, 1947, to interfere with the quantum of punishment, the said power should be exercised judiciously. The failure of the Conductor of the Transport Corporation Bus to collect the correct fair from the passengers, who was dismissed from service was set aside by the Labour Court, which order was confirmed by the High Court and the same was set aside by the Supreme Court on the ground that the Labour Court has not exercised its jurisdiction, conferred under Section 11A of the Act, judiciously.

16. A similar order passed by the learned single Judge ordering reinstatement of a bank staff was set aside by the First Bench, of which one of us (NPVJ) was a party, in W.A.No.2096 of 2012, Judgment dated 27.3.2013.

17. In view of the above cited judgments, the learned single Judge was right in his decision in reversing the order of the Labour Court ordering reinstatement without backwages, with continuity of service.

The writ appeals are dismissed. No costs.

Sd/-

Asst.Registrar

/True Copy/

Sub Asst.Registrar

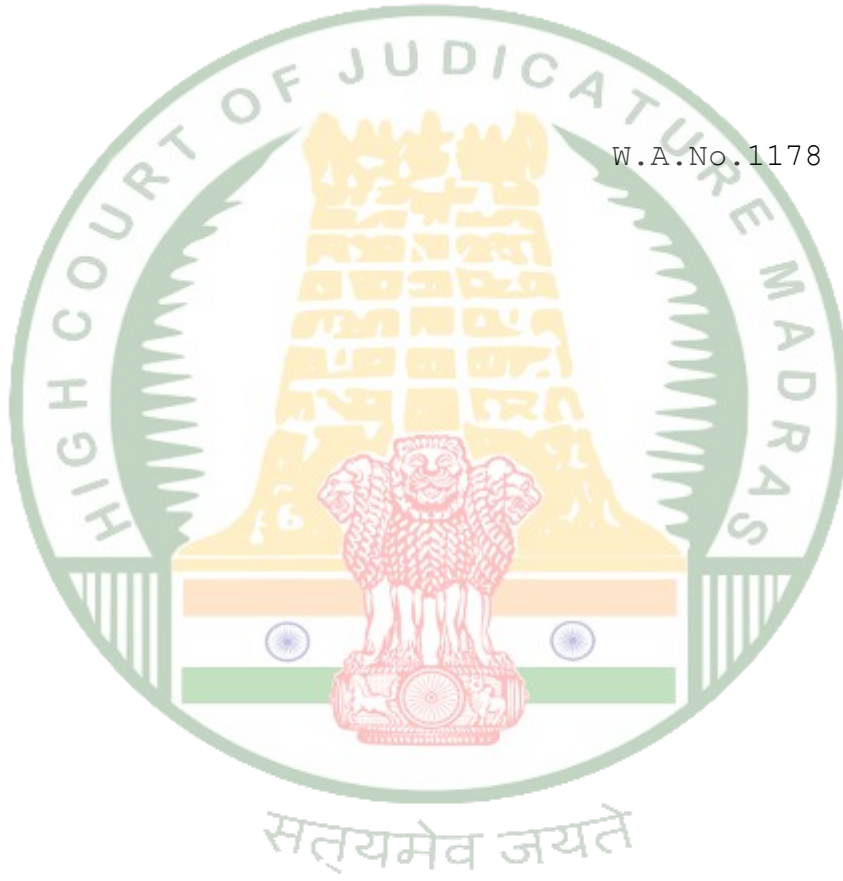
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To

1.The Presiding Officere,
Labour Court,Coimbatore.

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W.A.No.1178 & 1179 of 2011



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