(2003) 12 MAD CK 0163

Madras High Court

Case No: Writ Petition No. 20951 of 2001

Bharat Overseas Bank Ltd.		APPELLANT
	Vs	
The Deputy Commissioner of Labour and Another		RESPONDENT

Date of Decision: Dec. 2, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Evidence Act, 1872 - Section 114
- Tamil Nadu Shops and Establishments Act, 1947 - Section 41(2)

Citation: (2003) 4 CTC 641

Hon'ble Judges: F.M. Ibrahim Kalifulla, J

Bench: Single Bench

Advocate: S. Ravindran, for T.S. Gopalan and Co, for the Appellant; D. Malarvizhi, Government Advocate for Respondent No. 1 and N.G.R. Prasad, for the Respondent

Judgement

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F.M. Ibrahim Kalifulla, J.
The petitioner seeks to challenge the order of the first respondent dated 20.4.2001 in T.S.E. No. 28 of 1995, in and by which, the first respondent set aside the order of dismissal dated 14.9.1995 issued to the second respondent.

2. The brief facts, which lead to the filing of the writ petition are as under:

The second respondent was at the time of dismissal working as Chief Regional Manager of the petitioner bank at Chennai. While he was working as Manager of the Cannaught place branch, New Delhi between 13.7.1987 and 30.6.1989 and as Chief Manager of the said branch from 1.7.1989 to 16.2.1991, he is stated to have committed certain irregularities in respect of one of the constituents of the bank viz., M/s. Rakesh Kumar Mukesh Kumar, a partnership firm and also in respect of

one Dinesh Trading Corporation. Further, while he was working as Chief Regional Manager, he was required to oversee the operation of the branches under his control. As such, in respect of the premises where the Bombay Fort Branch was located, due to some delay in corresponding with the landlord of the said premises in renewing the lease agreement, the bank was stated to have put to certain difficulties. In respect of the above stated issues, the second respondent was issued with two charge sheets one dated 16.2.1995 and another one dated 23.5.1995. The petitioner is stated to have held domestic enquiries pursuant to the issuance of both the charge sheets and ultimately, based upon the report of the enquiry officers, the second respondent was dismissed by the petitioner by an order dated 14.9.1995. The second respondent challenged the order of dismissal before the first respondent by way of an appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as "the Act") The said appeal was numbered as T.S.E.No. 28 of 1995, in which the impugned order came to be passed by the first respondent.

3. Assailing the order of the first respondent dated 20.4.2001, Mr. S. Ravindran, learned counsel appearing for the petitioner contended that before the first respondent irrespective of the domestic enquiry held against the second respondent, the petitioner chose to let in necessary evidence in support of the charges levelled against the second respondent in the charge sheets dated 16.2.1995 and 23.5.1995, that ten witnesses were examined, while Exs.R-1 to 28 were marked on its side. According to the learned counsel, while the second respondent did not go into the box, Exs.A. 1 o 53 were marked on his side. However, according to the learned counsel for the petitioner, the first respondent without analysing the evidence in detail, passed the impugned order in a superficial manner while holding that the charges levelled against the second respondent were not proved. The learned counsel would therefore contend that a reading of the order of the first respondent would disclose total non-application of mind while setting aside the order of termination and therefore, the same is liable to be set aside.

4. As against the above said submissions, Mr. N.G.R. Prasad, learned counsel appearing for the second respondent contended that the petitioner has miserably failed to establish the charges levelled against the second respondent both before the enquiry officers, who held the domestic enquiries, as well as, before the first respondent and therefore, the conclusion of the first respondent cannot be found fault with. According to the learned counsel, insofar as the first charge sheet was concerned, the very initiation of it was made at a highly belated point of time and therefore, on that ground itself, the action of the petitioner cannot be countenanced. It was further contended that the Chairman of the petitioner bank was ill-disposed of towards the second respondent and therefore, the whole action was initiated against him out of malice and ill-will and therefore, on that ground also, the conclusion of the first respondent should not be interfered with.

5. As regards the second charge sheet which related to the renewal of the lease of Bombay Fort Branch Premises was concerned, the learned counsel contended that the second respondent cleared the papers well in advance and the concerned Branch Manager failed in his duty in sending the intimation to the landlord about the readiness of the petitioner to renew the lease and therefore, the charge levelled against the second respondent in the charge sheet dated 23.5.1995 was rightly held to be not established against him by the first respondent. As regards the merits of the charges in the charge sheet dated 16.2.1995, learned counsel would contend that in the first place, many of the relevant documents, which the second respondent called upon the petitioner to produce both before the enquiry officer as well as before the first respondent were not produced and therefore, in the absence of the said documents, the first respondent had to necessarily hold that the said charges levelled against the second respondent were not proved. Lastly the learned counsel contended that in any event, since there was no allegation of fraud or dishonesty against the second respondent in either of the charge sheet, the extreme punishment of dismissal was highly disproportionate. On the side of the second respondent reliance was placed upon the decisions reported in K. Chidambaram Vs. Govt. of Tamil Nadu and Others, ; Parry and Co. Ltd., Madras Vs. Deputy Commissioner of Labour and Another, ; H.D. Singh Vs. Reserve Bank of India and Others, ; C.P. Harish v. Central Warehousing Corporation 2000 (3) L.L.N. 975; State of Madhya Pradesh v. Bani Singh and Anr. 1990 (1) L.L.N. 780; D. Ramaswami Vs. State of Tamil Nadu, ; Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another, ; Kailash Nath Gupta v. Enquiry Officer 2003 (2) L.L.N. 392; Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, ; Coimbatore and Periyar District Dravida Panchalai Thozilalar Munnettra Sangam (represented by its Secretary) v. Management of Pionner Mills Ltd. 2001 (3) L.L.N. 269 and the order dated 6.2.1996 in Workmen represented by Its General Secretary v. The Industrial Tribunal, Madras, W.P. No. 317 of 1988.

6. In reply to the submissions made on behalf of the second respondent, Mr. S. Ravindran, learned counsel for the petitioner contended that since the challenge in the writ petition is to the order of the first respondent, the various submissions made by the learned counsel for the second respondent as regards the manner in which the domestic enquiry was held were totally irrelevant. The learned counsel pointed out that the second respondent was working as a Manager between 13.7.1987 and 30.6.1989 in Class III post and the post of Chief Manager, which was held by the second respondent between 1.7.1989 and 16.2.1991 was a promotion coming within Class IV of the services and the subsequent position held by the second respondent both as Regional Manager as well as Chief Regional Manager after 16.8.1994 was also in class IV category. According to the learned counsel the post of Chief Regional Manager was not a promotion, but only certain additional responsibilities were entrusted with the second respondent. The learned counsel

would therefore contend that the reasoning of the first respondent based on the promotion of the second respondent was without any substance. As far as the arguments made on the ground of delay, the learned counsel contended that in the very charge sheet dated 16.2.1995 itself, the disciplinary authority had explained as to how the action could not be taken earlier and the non-consideration of the reasons given by the disciplinary authority by the first respondent in the order impugned in this writ petition itself vitiates the order of the first respondent. The learned counsel also pointed out that while more number of exhibits have been filed by the petitioner before the first respondent, the order impugned disclose that the first respondent was not even aware of the said exhibits as could be seen from the recordings made by the first respondent in paragraph 7 and therefore, it has to be held that the first respondent did not apply his mind at all while passing the order impugned in this writ petition. In this respect, the learned counsel also pointed out that while no one was examined on the side of the second respondent, the first respondent has specifically stated to the effect that the second respondent examined himself as AW1 and filed Exs.A. 1 to 45. Here again, the learned counsel pointed out that when the second respondent called for certain records from the petitioner and some of the documents were produced at his instance, those documents were marked as Exs.A. 48 to 53 while the first respondent would mention in paragraph 7 that only Exs.A. 1 to 45 alone were marked on the side of the second respondent. According to the learned counsel, if only the first respondent had perused Ex.R. 17 series, he would have been convinced that all the charges levelled against the second respondent in the charge sheet dated 16.2.1995 and also the justifiable reasons for the time delay involved in the initiation of the said proceedings against the second respondent. As regards the arguments based on the allegation of mala fide against the then Chairman of the petitioner, the learned counsel contended that there was absolutely no mala fide alleged against the Chairman in the appeal filed before the first respondent nor was any submission made before the first respondent and in the said circumstances, the present submission made on behalf of the second respondent cannot be countenanced. As regards the non-production of certain documents called for by the second respondent, the learned counsel contended that wherever the petitioner was not able to produce the documents, the same have been satisfactorily explained by it both in the counter filed to the application for production of documents as well as in the affidavit filed while producing the documents after the order was passed by the first respondent in the application for production of documents. According to the learned counsel, the first respondent failed to give its reasons as regards the explanation offered and in the circumstances, the first respondent has not applied his mind while passing the order impugned in the writ petition. According to the learned counsel, the documents which were produced at the instance of the second respondent and marked as Exs.A. 48 to 53 were all marked with the consent of the second respondent though they were all xerox copies and he cannot be heard to complain about the same at this point of time.

7. The learned counsel for the petitioner relied upon the decisions reported in The Management of the Catholic Syrian Bank Ltd. Vs. The Industrial Tribunal, Madras-104, and another, ; Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, ; Workmen, Employed in Engine Valves Limited Vs. Engine Valves Limited, ; The United Planters Association of Southern India Vs. K.G. Sangameswaran and another, , Thirumangalam Co-operative Urban Bank Ltd. v. Assistant Commissioner of Labour, Madurai, 1992 (2) L.L.N. 763; Orissa Mining Corporation and another Vs. Ananda Chandra Prusty, .

8. u/s 41(2) of "the Act", a person employed has got the right to file an appeal before the Appellate Authority the first respondent herein on the ground that he was not guilty of the misconduct as held by the employer. Under Rule 9(3) of the Rules, it is specifically provided that the procedure to be followed by the Appellate Authority u/s 41(2) should be summary and after recording the evidence adduced before him in a brief manner, orders should be passed giving reasons therefor.

9. The scope and power of the Appellate Authority under the Act came up for consideration before the Hon''ble Supreme Court in The United Planters Association of Southern India Vs. K.G. Sangameswaran and another, wherein the Supreme Court has made it clear in paragraph 22 to the effect that the Appellate Authority has got wide jurisdiction to record evidence afresh if necessary in order to come to its own conclusion on the vital question whether the employee was guilty or not of the charges levelled against him. Therefore, by now it is well settled that even if the enquiry held against the person employed was ex parte or if no enquiry has been held at all before the order of dismissal, it would still be open for the employer to let in evidence afresh before the appellate authority.

10. In the case on hand, two enquiries were held against the second respondent pursuant to the charge sheet dated 16.2.1995 and 23.5.1995. Both were ex parte enquiries. Therefore, the petitioner came forward to let in evidence afresh apart from placing before the first respondent whatever evidence that was placed before the enquiry officers in the domestic enquiries to establish the charges levelled against the second respondent. The first respondent also permitted the petitioner to adopt the said course. In such a situation, now it was for the first respondent to examine whether the charges as held proved by the petitioner can be accepted based on the materials placed before it by reaching its own conclusion. For carrying out the above said exercise, it is needless to state that the first respondent should have examined all the relevant documents placed before it both on the side of the petitioner as well as on behalf of the second respondent and state his own reasons as to why or how the case pleaded on behalf of the petitioner cannot be accepted or the case of the second respondent was fully justified or vice versa.

11. With the above said legal background remaining, as regards the jurisdiction and power to be exercised by the first respondent, when the order of the first respondent impugned in the writ petition is analysed, I find that while in paragraph

7 of the order, the first respondent has recorded the documents marked on either side and the witnesses. Its conclusion has been set out by the first respondent only in paragraphs 14 to 24. In paragraph 14 to 19, the first respondent has dealt with the first charge sheet dated 16.2.1995 while in paragraphs 20 to 24, he has considered the allegations contained in the charge sheet dated 23.5.1995. On a close reading of the order in the impugned writ petition, I feel that before dealing with the conclusions of the first respondent on the charge sheet dated 16.2.1995, its conclusion on the charge sheet dated 23.5.1995 can be dealt with in the first instance.

12. In the said charge sheet dated 23.5.1995, the charges levelled against the second respondent were as under:

"Charge No. 1: With regard to renewal of the leave and licence agreement and the corresponding two agreements all dated 30.3.1991 pertaining to the Fort Branch, Bombay, you failed and neglected to take any action on your own as Chief Regional Manager.

Charge No. 2: You failed and neglected to take steps for exercising the Bank''s option for renewal of the leave and licence and the other two agreements dated 30.3.1991 even after receipt of the telex message dated 26.12.1994 from the Fort Branch.

Charge No. 3: When the premises Department put up a note dated 28.12.1994, you simply made your recommendations thereon without ensuring the issue of timely instructions to the branch for exercising the option for renewal.

Charge No. 4: You failed and neglected to obtain the approval for the note dated 28.12.1994 even after the branch manager Mr. B.R. Prabhakar reminded you over phone on 30.12.1994.

Charge No. 5: You have made a false statement in your reply dated 15.03.1995 saying that on 30.12.1994 you contacted the Fort Branch and gave instructions for renewal of the lease, when as a matter of fact you did not contact the branch manager and it was only the branch manager Mr. B.R. Prabhakar who contacted you on phone for your instructions on the tele message dated 26.12.1994.

Charge No. 6: You have failed to discharge your duties with utmost care, caution, sincerity and diligence expected of a Chief Regional Manager as a result of which our Bank is facing legal complications, litigations and monetary loss and alternatively if the Bank were to settle for a higher cost on rentals and Ors. charges as demanded by the landlord, the Bank will suffer additional cost of Rs. 18.75 lacs for next five years with cumulative effect, perpetual additional cost and interest free deposit."

13. The sum and substance of the charges against the second respondent were that while as Chief Regional Manager, he was the ultimate authority to approve the

option for renewal of lease of licence for a further period of five years in respect of Bombay Fort Branch premises and even though the papers relating to the said option were placed before him on 28.12.1994, he did not take necessary steps to ensure that such option was approved and communicated to the landlord of the premises before 31.12.1994 as that was the last date before which, the option had to be communicated to the landlord or otherwise, the existing agreement provided for the right of the landlord to terminate the lease. By the above said charges, the second respondent was sought to be held responsible for not communicating the bank''s option to the landlord within the time limit which had resulted in an additional monetary liability to the petitioner by way of increase in rent and amenity charges.

14. As regards the said charge, the relevant document was Ex, R-20, which is found in Volume III of the records of the first respondent and at page No. 122 of the bound volume of documents, said to have been filed by the respondents before it. The first respondent in the course of its discussion relating to the Charge Sheet dated 23.5.1995, in paragraph 20 to 24 has noticed that the second respondent had cleared the approval of the option to be exercised for renewal on 29.12.1994 itself. The evidence available on record has also been noted by the first respondent to the effect that the Manager of Fort Branch, Bombay spoke with the second respondent over phone on 30.12.1994 when the decision of the second respondent was conveyed to him. To this extent, the evidence available on record as discussed by the first respondent is not in controversy.

15. Therefore, the only question was whether the second respondent can be held responsible for not communicating the decision to the landlord before the last date as regards the bank''s readiness to opt for its renewal for a further period of five years. When once the clearance was given by the second respondent as early as on 29.12.1994, and such clearance was also communicated to the Branch Manager concerned by 30.12.1994, significantly there is nothing on record to state as to why the said decision was not acted upon by the concerned Branch Manager immediately by communicating the same to the landlord concerned. In this context, it has to be stated that even according to the petitioner the telex message from the Bombay Fort Branch itself was made available only on 26.12.1994 and the last date was 31.12.1994. The second respondent contended that the said telex was placed before him only on 29.12.1994 and that he immediately cleared it and advised the premises department officer and therefore, as rightly held by the first respondent, the responsibility sought to be fixed on the second respondent by the petitioner bank in the facts and circumstances of the case cannot be accepted.

16. I am therefore convinced that the reasoning of the first respondent as found in paragraph 20 to 24 of the impugned order sufficiently demonstrate that the conclusion of the first respondent was fairly made with reference to the relevant materials concerning the said charge and that no fault can be found with the said

reasoning of the first respondent while reaching the said conclusion. Therefore, that part of the order in holding that the charges levelled against the second respondent in the charge Sheet dated 23.5.1995 were not made out will have to be upheld.

17. Once we steer clear of the said position, the next question for consideration is as regards the conclusion of the first respondent on the first charge sheet dated 16.2.1995. As already stated, the discussion on the first charge sheet has been made by the first respondent in paragraphs 14 to 19 of its order. The various reasons which weighed with the first respondent while dealing with the said charge can be listed out as under:

a. The second respondent was serving in the Cannaught Place, New Delhi Branch between 1989 and 1991.

b. He was promoted in April 1991 as Regional Manager and again promoted as Chief Regional Manager in August 1994

c. As audits were being conducted by the banks every year, if really the conduct of the second respondent while working in the Cannaught Place Branch was adverse, he would not have been promoted as Regional Manager as well as Chief Regional Manager.

d. The charges were levelled against him at the belated point of time. The audit report with regard to the alleged charges were not produced and relied upon by the bank.

e. No ill motive was alleged against the second respondent as regards the transactions referred to in the charge sheet.

f. There was no allegation against the second respondent that he gained any monetary benefits from those two constituents.

g. The second respondent has only exercised his discretionary powers in those transactions.

h. The concerned advances were all secured by the collateral securities.

18. A reading of paragraph 15 and 16 of the impugned order shows that the first respondent only discussed about the domestic enquiry proceedings held against the second respondent. In fact, at the end of paragraph 16, the first respondent concluded by stating that the enquiry was not held in a fair and proper manner. Similarly, in paragraph 17 also, the first respondent has only dealt with the manner in which the domestic enquiry was held. In paragraph 18, he would state that version of ten witnesses examined by the petitioner were not corroborated with any documentary evidence and that none of the witnesses have deposed that the second respondent misappropriated the bank''s funds or he transacted business for any monetary benefits or any other extraneous consideration. The first respondent also stated that some of the documents directed to be produced in the application

were not produced. The first respondent therefore ultimately concluded that the failure to produce certain documents only showed that the same would have otherwise exposed the petitioner bank. So, saying the first respondent ultimately held that the charges levelled against the second respondent in the charge sheet dated 16.2.1995 were not proved by letting in satisfactory evidence. From the above said narration made in paragraphs 14 to 19, I do not find any discussion as regards the specific charges contained in the charge sheet dated 16.2.1995 with particular reference to any document or oral evidence.

19. For the better appreciation of the case, the charges levelled against the second respondent in the charge sheet dated 16.2.1995 can be extracted hereunder:-

"Charge No. 1: By obtaining URDP receipts for Rs.2,34,499.70 as against the stipulation of Rs.5,44,000 you violated the terms of sanction dated 9.12.1989.

Charge No. 2: By disbursing the documentary demand bills purchase limit without obtaining "no due certificate" from Andhra Bank, you again violated the terms of sanction dated 9.12.1989.

Charge No. 3: You purchased the bills referred to in the Annexure from the firm Rakesh Kumar Mukesh Kumar far in excess of the limit sanctioned by Head Office under endorsement dated 9.12.1989.

Charge No. 4: You purchased three number of bills from Dinesh Trading Corporation for an aggregate sum of Rs.3,91,395 in excess of your powers and in the absence of any sanction from Head Office.

Charge No. 5: You failed and neglected to submit excess report to Head Office in respect of the bills purchased by you from Rakesh Kumar Makesh Kumar and its associate concern Dinesh Trading Corporation.

Charge No. 6: You failed and neglected to take any steps on your own for carrying out Chairman''s directions contained in the note dated 24.3.1994.

Charge No. 7: You committed an act of disobedience by failing to carry out the lawful and reasonable order of Chairman dated 24.3.1994.

Charge No. 8: You did not disclose to Chairman at any point of time that the firm Rakesh Kumar Mukesh Kumar had availed of advances from Andhra Bank, Delhi.

Charge No. 9: You failed and neglected to put up any note to Chairman in respect of either the interrogation made by CBI or your appearance before the Court in connection with the criminal proceedings which are presently pending against the partners of Rakesh Kumar Mukesh Kumar.

Charge No. 10: You have failed to discharge your duties with utmost care, caution, diligence and honesty expected of an Officer of the Bank as a result of which the Bank is facing substantial monetary loss."

20. The sum and substance of the charges against the second respondent in the charge sheet dated 16.2.1995 were that while he was working as Manager as well as the Chief Manager in the Cannaught Place Branch between 1989 and 1991, there was a sanction order dated 9.12.1989, which is found in Ex.R. 17 series at pages 52 to 88 of Volume III of the first respondent''s records and in the bound book titled as Documents filed by the respondents. The concerned document is at page No. 54. According to the petitioner, the document dated 09.12.1989 is a sanction endorsement providing for certain credit facilities to a Firm called M/s. Rakesh Kumar Mukesh Kumar and that before extending such credit facilities to the said firm, it was directed that that should be secured by URDP for Rs. 5.44 lakhs (another form of fixed deposit), and no due certificate from Andhra Bank in which bank also the firm was having an account and transactions.

21. The allegation against the second respondent was that he failed to secure the necessary URDP for Rs. 5.54 lakhs and that he allowed the firm to avail credit facilities to an extent of more than 36 lakhs while the limit was only Rs.25 lakhs. It is also stated that some of the lorry receipts, which were purchased by the second respondent were later found to be bogus receipts which were produced by RKMK and thereby the bank was put to heavy monetary loss. In the charge sheet, it is stated that the Chairman called for a meeting on 24.3.1994, in which admittedly the second respondent was also present when the Chairman recorded that he called for the files on that day, after knowing that CBI was enquiring into the matter at the Head Office, when they wanted the concerned Regional Managers to be present at Delhi on the basis of a complaint lodged by the lorry company for forged lorry receipts that the Chairman was not informed about the details and therefore he wanted the concerned Manager to make a thorough study and report to him with details. It was in the above stated background, charges came to be framed against the second respondent.

22. According to the petitioner, the various documents relating to the above said charges including the note prepared by the Chairman on 24.3.1994 were placed before the first respondent and the concerned officers were also examined on the petitioners side by way of RW- 1 to 10 apart from marking Exs.R 1 to 28. However, the perusal of the findings recorded by the first respondent in paragraph 14 and 15 discloses that he has not referred to any of the documents either Exs.R.1 to R.28 or Exs.A.1 to A.53, which were marked on the side of the second respondent. Therefore, it can be easily visualised that the first respondent''s conclusion in paragraphs 14 and 15 and had no co-relation to any of the evidence either of the petitioner or that of the second respondent. In this context, the submission of Mr. Ravindran, learned counsel for the petitioner that the first respondent had not looked into the documents of the either parties inasmuch as in paragraph 7 of the first respondent''s order while he had stated that the second respondent examined himself as AW1, which is factually incorrect, refers only to the Exs.A.1 to 45 and Exs.R.1 to 16. In the order copy served on the petitioner, there is no separate list of

documents mentioned except what has been stated in paragraph 7 at page No. 8. But, a perusal of the original records produced called for and produced before me disclose that as many as 53 documents have been marked as Exs.A.1 to 53 on the side of the second respondent and 28 documents as Exs.R.1 to 28 on the side of the petitioner. When such material documents on the side of both sides were placed before the first respondent, while exercising his power u/s 41(2) of the Act, the first respondent is expected to deal with atleast the relevant documents. While it is open to the first respondent to either to accept or reject the stand of either parties based on such oral and documentary evidence by giving valid reasons, the reference to relevant documents would only show that any such conclusion was made after consideration of the relevant evidence placed before him. I am unable to accept the submissions made on behalf of the second respondent that from whatever stated in paragraph 14 and 15, this Court should deduce that such findings recorded therein should be corelated to the various documents relied upon by the second respondent and the failure of the petitioner to produce certain documents called for by the second respondent, which were directed to be produced by the first respondent. I am afraid that this Court in exercise of its power under Article 226 of the Constitution can be expected to indulge in re-appreciation of the whole evidence, which exercise should have been actually done by the first respondent. I can understand any minor omission that came to be made by the first respondent while considering the evidence placed before it, either oral or documentary, which omission could be satisfactorily explained with reference to the available documents on record. In such a situation, this Court instead of directing the first respondent to re-do the whole exercise once over again could itself examine the materials to find out the correctness of the finding in the order impugned before it. But, when the first respondent totally failed to exercise its jurisdiction expected of it, it will have to be held that in such a situation it would become inevitable for this Court to set aside the said order and direct the first respondent to pass orders afresh analysing the entire evidence placed before it in a full fledged manner and pass orders on merits. I am convinced that in the case on hand, the first respondent failed to exercise its jurisdiction in the manner expected of it in the matter of consideration of the evidence placed before it, especially when the petitioner, as well as, the second respondent relied upon very many material evidence in support of their respective stand. Having regard to the gross failure committed by the first respondent in that respect while passing the impugned order, insofar as it related to the charge sheet dated 16.02.1995, it will have to be held that the said part of the order cannot be sustained and the same is liable to be set aside.

23. As regards the contention that the charges in the charge sheet dated 16.2.1995 came to be laid in a delayed manner, here again according to the petitioner sufficient explanation have been stated in the charge sheet itself and in the circumstances, the first respondent ought to have examined whether such an explanation offered by the petitioner for the delayed issuance of charge sheet are

acceptable. As rightly pointed out by the learned counsel for the petitioner, the first respondent is not expected to state in one single line that the delay in issuance of charge sheet would vitiate the very issuance of it. As I propose to direct the first respondent to pass fresh orders on merits, I do not wish to examine the correctness or otherwise of the submissions made on behalf of either side in regard to either the merits of the charges or the delay aspect of it, lest in my view, any such attempt by this Court would only cause prejudice to both the parties. Therefore, I refrain from going into the merits of the various submissions made on behalf of the second respondent on the charges as well as the alleged belatedness in the issuance of the charge sheet itself.

24. As far as the contention that the petitioner failed to produce certain documents called for by the second respondent and therefore on that score it will have to be held that the petitioner failed to establish the charges, it will have to be stated that merely because certain of the documents were not produced it cannot be held that, that by itself would result in a conclusion that the entire set of charges were not proved. Here again, it is incumbent on the part of the first respondent to examine the explanation offered by the petitioner for not producing certain of the documents, and state whether such explanation can be accepted. The first respondent should also examine whether such of those documents which were produced by the petitioner at the instance of the second respondent would show that the charges levelled against the second respondent cannot be maintained. I find that the first respondent has not carried out such an exercise while passing the order impugned in the writ petition. The first respondent had proceeded on the footing that whether the documents called for by any party can be directed to be produced in respect of its relevancy and the failure on the part of the party who was directed to produce such documents would ipso facto result in the drawl of an adverse inference. Such an attitude of a Quasi-judicial Authority can never be approved. The Appellate Authority should apply its mind and state whether there is prima facie necessity to call upon any party to produce the documents called for by the other party instead of blindly ordering the direction for production of such documents.

25. In this context, if reference is made to the judgment relied upon by the second respondent reported in K. Chidambaram Vs. Govt. of Tamil Nadu and Others, , it is stated as follows:

".....These documents have not been furnished to the petitioner and the explanation offered by the Department is that these documents are not available. It is not stated how these documents became unavailable. It is not known whether these documents were destroyed or whether they are missing. All these documents are of the years 1974 and 1975. They could not have been destroyed in 1976 when the petitioner has called for these documents. It is also difficult to believe that all these documents together are lost. The only reasonable inference is that the

Enquiring Officer has deliberately withheld from the petitioner those documents. The petitioner, has therefore, been deprived of a very valuable opportunity of meeting the charges framed against him in an effective manner....."

Therefore, when such a detailed discussion and deliberation is required to reject a stand of the party, who did not produce the documents called for by the other side, I am unable to appreciate the reasoning of the first respondent in stating in one sentence that the relevant documents called for by the second respondent were deliberately not produced and therefore, a conclusion should be reached that the charges were not proved. Similarly, in the decision reported in Parry and Co. Ltd., Madras Vs. Deputy Commissioner of Labour and Another, a Division Bench of this Court has found that the authority has given acceptable reasons for the failure of the management in not producing the relevant documents by referring to the charges. When the judgment of His Lordship P. Sathasivam, J., reported in C.P. Harish v. Central Warehousing Corporation 2000 (3) L.L.N. 975 is perused, I find that the delay occurred in the issuance of charge sheet was 13 years. That was a case, which came up straight away by way of a writ petition challenging the charge sheet itself. On a detailed analysis of the explanation offered, the learned single Judge reached a conclusion that the delay was not satisfactorily explained. Therefore, the said judgment can have no application to the facts and circumstances of the case. Similar is the case in regard to the judgment reported in State of Madhya Pradesh v. Bani Singh and Anr. 1990 (1) L.L.N. 780 where the delay was 12 years.

26. In the light of what is stated by me as regards the total non-application of mind of the first respondent while passing the impugned order in the writ petition, I do not find any scope to apply the ratio of the Hon''ble Supreme Court in the decision reported in Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another, . Having regard to my conclusion that detailed analysis should have been made by the first respondent while dealing with the charge sheet dated 16.2.1995, I do not find any necessity to refer to the details of the Judgment reported in Kailash Nath Gupta v. Enquiry Officer, 2003 (2) L.L.N. 392; Coimbatore and Periyar District Dravida Panchalai Thozilalar Munnettra Sangam (represented by its Secretary) v. Management of Pionner Mitts Ltd. 2001 (3) L.L.N. 269

27. Reliance was placed upon the judgment of the Hon''ble Supreme Court in Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, , wherein it was observed at page No. 170 that if the domestic enquiry was irregular and the employee was given opportunity to prove his case, while doing so, the Tribunal tries the merits itself and therefore, when the first respondent was carrying out the said exercise in that situation, it was contended that the party should be prepared to accept the ultimate conclusion rendered on merits by the said authority. I am afraid that the ratio of the above stated judgment of the Hon''ble Supreme Court can be deduced to that effect. When the Tribunal is to deal with the

merits afresh, based on the materials placed before it, in my view applying the above said ratio of the Hon''ble Supreme Court, more onerous responsibility is imposed upon the Tribunal to ensure that no stone is unturned in the analysis of the various materials placed before it while rendering its conclusion on merits. In the case on hand, the first respondent, in an arbitrary manner rendered its decision by a one line order by reaching a conclusion without proper reasoning. In fact, the above said decision of the Hon''ble Supreme Court has been clearly explained by the Division Bench of our High Court in the judgment reported in Workmen, Employed in Engine Valves Limited Vs. Engine Valves Limited, in paragraph 32. Though the learned counsel for the petitioner relied upon the decision reported in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, to contend that irrespective of the allegation of mis-appropriation or unlawful monetary gain, the very conduct of the second respondent in acting beyond his authority itself would constitute a serious misconduct warranting the punishment of dismissal, I do not propose to refer to the same at this stage where I feel the matter should go back to the first respondent for passing fresh orders on merits. For the very same reason, I do not find any scope to refer to the details of the judgment reported in The Management of the Catholic Syrian Bank Ltd. Vs. The Industrial Tribunal, Madras-104, and another, . The judgment reported in Orissa Mining Corporation and another Vs. Ananda Chandra Prusty, was relied upon by the learned counsel for the petitioner to contend that in the light of the explanation of the second respondent to the charges, the burden Was on him to establish that he was not guilty. Here again I feel that it would be better that the said question is also analysed by the first respondent inasmuch as any reference to the facts involved may cause prejudice to the second respondent when the matter is being remanded to the first respondent for fresh consideration. My conclusions for setting aside the order impugned in the writ petition and for remitting the matter back to the first respondent is fully supported by the decision of His Lordship Mr. Justice J.Kanakaraj reported in Thirumangalam Co-operative Urban Bank Ltd. v. Assistant Commissioner of Labour Madurai 1992 (2) L.L.N. 763.

28. For all the above said reasons, I hold that the order of the first respondent insofar as it relates to the charge sheet dated 16.2.1995 is perverse in all respects and therefore that part of the order is hereby set aside while upholding its conclusion on the charge sheet dated 23.5.1995. The matter is therefore remitted back to the first respondent to pass fresh orders as regards the charges levelled against the second respondent in the charge sheet dated 16.2.1995 by making a detailed analysis of the respective evidence placed before it. The first respondent shall pass orders within three months from the date of receipt of copy of the records from this Court along with this order. It is stated that during the pendency of the writ petition, pursuant to interim orders of this Court the petitioner paid a sum of Rs. 1 lakh to the second respondent which payment was directed to be made by the First Bench of this Court in W.A.No. 1763 of 2002. It is also confirmed that the said

sum of Rs. 1 lakh has already been paid to the second respondent. Therefore, the payment of the said sum shall depend upon the outcome of the orders that may be passed by the first respondent after remand. In any case, the said sum can be adjusted in the Provident Fund amounts payable to the second respondent when the ultimate settlement is to be made.

29. The writ petition stands partly allowed to the extent indicated above. No costs.