(2013) 136 FLR 384 : (2013) 1 LLJ 153 : (2013) LLR 319

Madras High Court

Case No: Writ Petition No. 9165 of 2008

K. Kalirajan	APPELLANT
Vs	
Presiding Officer, Central Government Industrial Tribunal cum Labour Court, Chennai and Another	RESPONDENT

Date of Decision: Sept. 28, 2012

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11A

Citation: (2013) 136 FLR 384 : (2013) 1 LLJ 153 : (2013) LLR 319

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Balan Haridas, for the Appellant; S. Sethuraman, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
The writ petition is filed by the workman, challenging an Award passed by the Central Government Industrial Tribunal cum Labour Court (for short CGIT) made in I.D. No. 8 of 2006 dated 30.11.2007. By the impugned Award, the CGIT declined to grant any relief to the workman and dismissed the industrial dispute. The writ petition was admitted on 16.4.2008. On notice from this Court, the second respondent has filed a counter affidavit dated 27.5.2012.

2. Heard the arguments of Mr. Balan Haridas, learned counsel appearing for the workman and Mr. S. Sethuraman, learned counsel appearing for the second respondent.

3. The case of the petitioner workman was that he joined as Clerk cum Typist in the second respondent Bank on 22.6.1981. He was initially working at Kanakkanpatty Branch. From August 1988, he was working in the Sivakasi Branch. Thereafter, he was transferred to Rajapalayam Branch during May 2001 on being promoted as senior Assistant. His wife started a business along with his two brothers and her aunt. The business started by them was under the name and style of Venus Fireworks Industry at Panaiadipatty Village near Sivakasi Town. She started the business by availing loan from Tamil Nadu Industrial Investment Corporation (TIIC) and also by availing credit facility from State Bank of India, Sattur Branch. They also had current account with the Sivakasi Town Branch. The petitioner never had any role in the business of his wife and the said relatives.

4. It was further stated that in the Sivakasi Town Branch, the petitioner''s brother-in-law A. Jayachandran was working. The said Jayachandran was suspended for certain alleged transaction resulting in fraudulent withdrawal of funds. In those allegations, it was alleged that the said A. Jayachandran had used the current account for certain fraudulent activities.

5. The petitioner was suspended by an order dated 18.11.2002 while he was working in the Rajapalayam Branch. He was issued with a show cause notice dated 30.1.2003 alleging certain irregularities.

6. It was alleged that the petitioner had made false declaration to the Bank that he had no interest in the business of Venus Fire Works Industries, Panayadipatti, whereas he was a guarantor for the term loan of Rs. 7.90 lakhs availed by the said firm from TIIC. He had also executed a personal guarantee on 21.8.1997 without obtaining the prior approval of the Bank. He has made his wife and two of his brothers as partners in the said form and was exercising indirect control of the unit. He actively associated himself in managing the affairs of the unit. Clearing credits meant for other accounts were clandestinely diverted to the current account of the firm and amounts were withdrawn and he was fully aware of the facts.

7. The petitioner had the high value credits disproportionate to his known sources of income. The Current/Savings bank account maintained with Sivakasi Branch showed the following transaction:

8. It was further alleged that though the workman was aware that the conduct of cash credit account by the firm in Sattur Branch was not satisfactory and the account was classified as Non Performing Asset (NPA) as on 31.3.2002 even while there were substantial transactions in the firms''s current account at Sivakasi Town Branch, and he knowingly did not initiate any steps for regularisation of the cash credit account at Sattur Branch.

9. The petitioner gave his explanation dated 27.2.2003 stating that he was not aware of the fact that prior permission was required for signing a guarantee. If he had known that it is against banks instructions, he would have taken steps to get out of the guarantee. One of the partner, who is the sister of his mother-in-law as she was a spinster, needed the support of other men and therefore, she inducted his brothers and wife as partners. He had obtained administrative clearance from the Bank for permitting his wife to be the partner. He had not shown any interest in the business. Diversion of clearing credits meant for other accounts into the account of the firm had no connection to the petitioner. As he did not participate in the business of the firm, he had no knowledge about such diversion of clearing credits. The allegation of certain transactions are no way connected with him. He has neither acted as a partner of the firm nor had knowledge about the conduct of the accounts at Sattur.

10. Not satisfied with the explanation, a charge memo was framed on 7.6.2003. In that charge memo, as many as 5 separate charges were levelled against the petitioner. The petitioner gave his explanation on 4.7.2003. By an order dated 15.7.2003, an Enquiry Officer was appointed to conduct departmental enquiry. The said Enquiry Officer conducted the enquiry. In his report dated 8.5.2004, he found charges 1 to 3 and 5 were proved. In respect of Charge No. 4, only in respect of the Item No. 3 it indicated that the petitioner had engaged himself in trade and business which were out side the scope of the duties of the bank was said to have been proved. The Enquiry Officer held that the charge proved in respect of Item No. 3 of the charge sheet and in respect of the other three items, the charge is not proved and as such, entire charge was partly proved.

11. On the basis of the enquiry report, the petitioner''s explanation was sought for and he gave his comments on 10.6.2004. Thereafter, a second show cause notice was issued on 8.7.2004. The petitioner did not attend any personal hearing. The disciplinary authority on the basis of the records agreed with the findings of the Enquiry Officer and by an order dated 31.8.2004 dismissed the petitioner from service. Thereafter, the petitioner preferred an appeal to the Appellate Authority on 20.9.2004. The Appellate Authority gave a personal hearing and by an order dated 9.11.2004, dismissed the appeal and confirmed the order of punishment.

12. The workman thereafter raised an industrial dispute before the Assistant Labour Commissioner (Central) and on a failure report being sent to the Central Government, the Government of India, Ministry of Labour by their order dated 3.1.2006 referred the dispute relating to the punishment of dismissal given to the petitioner for adjudication by the CGIT.

13. On receipt of the reference by the Central Government, the CGIT registered the dispute as I.D. No. 8 of 2006 and issued notice to both parties. The workman filed his claim statement dated 28.2.2006. The second respondent State Bank of India filed a counter statement dated 25.5.2006.

14. Before the CGIT, on behalf of the Management, one O.P.G. Selvaraju was examined as M.W. 1. On the side of the workman, 18 documents, including the enquiry proceedings were filed and they were marked as Exhibits W-1 to W-18. On the side of the Management, 4 documents were filed and were marked as Exhibits M-1 to M-4. Exhibit M-4 is the relevant Rules of Conduct set out in the Sastry Award which are applicable to the workman employed by the Bank.

15. The CGIT in its impugned Award dated 30.11.2007 framed two issues for consideration. It analyses all the 5 charges independently. In respect of first charge that the workman had made false declaration that he had no interest in the business of Venus Fire Works Industry and that he gave personal guarantee for the loan availed by the industry without prior approval of the bank was found proved. It is clearly in contravention of the Rules of Conduct set out in Exhibit M-4. The contention of the workman that he was not aware of the rules cannot be accepted and he has clearly admitted the fact that the had not obtained prior permission for being a guarantor for the finance. The CGIT also held that feigning ignorance by the workman cannot be taken as a ruse for not obtaining permission.

16. In respect of the second charge, the CGIT found that the findings rendered by the Enquiry Officer were based upon assumptions and presumptions and that he had exercised indirect control over the business was not based upon any reliable material. Therefore, it found the charge not proved.

17. Similarly, in respect of the third charge namely that he was fully aware of the credit amount for other accounts which was diverted to the current account of the firm was concerned, the CGIT found that there was no iota of evidence to show that he had connived with his relative A. Jayachandran in his fraudulent activities and therefore, third charge was not proved.

18. In respect of 4th charge namely certain transactions in Current/SB account maintained in Sivakasi branch shows that there was disproportionate source of income, the CGIT found that there was no evidence to show that the amounts belonged to the petitioner alone and that he had interest in the business is based upon no legal evidence and hence, 4th charge was not proved.

19. In respect of 5th charge, the CGIT found that there were no materials placed to show that he had knowledge about the transaction as alleged by the Bank. The Enquiry officer without any basis had come to the conclusion that he had involved in the affairs of the firm and had full knowledge about the statement of cash credit of the unit at Sattur Branch. Therefore, without any legal evidence and without any materials, the Enquiry Officer gave a conclusion regarding the 5th charge and hence, the CGIT held 5th charge was also not proved.

20. After analysing the report of the Enquiry Officer, the CGIT discussed whether for the proved first charge, punishment of dismissal was justified. In discussing the same, in paragraphs 8 and 9, the CGIT held as follows:

8. But as against this, the learned counsel for the respondent contended even assuming for argument sake without conceding that out of 5 charges, 4 charges have not been proved against the petitioner since it is established in the first charge that the charge has been proved against him, this Tribunal as a revisional authority cannot set aside the order passed by the domestic Tribunal and cannot set aside the punishment imposed on him. He argued interference with the quantum of punishment cannot be a routine matter. The punishment was imposed on the proved charges clearly establish that the respondent bank employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interests of the bank. Hence the punishment of dismissal was proportionate: to the misconduct proved and the interference thereof was not warranted. It is his further argument in banking industry, trust and integrity need to be preserved by every employee. In this case, the petitioner has not discharged his duties with diligence and integrity, under such circumstances, the argument that u/s 11-A of the I.D. Act, the Court can interfere with the punishment is without any sub-stance.

9. I find much force in the contention of the learned counsel for the respondent because as I have already stated the petitioner has not obtained any prior permission to become a guarantor for the loan obtained by the industry and it is clearly established under Para-2 of "Conduct Rules", Vol.-1, Chapter-1 "if an employee guilty of infringing any of the provisions of para-1 may render himself liable to dismissal from the service". Since the petitioner has violated the conduct rules, I find the findings given by the Enquiry Officer cannot be said as violative or perverse. Accordingly, I find though out of 5 charges, 4 charges have not been proved, Charge No. 1 is clearly proved and therefore this Tribunal cannot interfere in the imposition of punishment made by the domestic Tribunal. As such, I find this point against the petitioner.

21. Attacking this approach of the CGIT, Mr. Balan Haridas, learned counsel appearing for the petitioner contended if the dismissal is based upon five charges and the CGIT on re-appreciation of the evidence came to the conclusion that 4 charges were not proved and on the basis of the sole first charge, the CGIT ought to have exercised power u/s 11-A of the I.D. Act and should have interfered with the penalty. On the other hand, the CGIT merely went by the contention of the Management. The first charge said to have been proved is only technical. The workman had told even at the first instance that he was not aware of the rules of conduct and had he known the rules, he would have disassociated himself from being the guarantor. Further, he stated that the rule is only technical inasmuch as with the permission of the Bank, the act of guaranteeing to the business run by his wife could have been done, therefore punishment of dismissal was extreme. Considering the fact that the workman had served the bank for more than 15 years, the CGIT ought to have invoked have invoked power u/s 11-A and could not have pleaded helplessness.

22. It was contended by the learned counsel for the petitioner that initially the said Jayachandran was proceeded with by the CBI investigation, pending investigation, the Management hurriedly conducted the enquiry. When the CBI after thorough investigation filed a final report before the jurisdictional Court, the petitioner was not arrayed as an accused. There was nothing relatable to the petitioner with the transaction of the accused Jayachandran.

23. Per contra, Mr. S. Sethuraman, learned counsel appearing for the second respondent Bank contended that the reason why the petitioner was suspended was also related to the suspension of the said Jayachandran. The CBI investigation has nothing to do with the charges levelled against the petitioner. It is contended that giving guarantee to a partnership firm and to get a loan sanctioned to the firm would amount to engaging in trade or business outside the scope of the duties and hence, the Award did not suffer from any infirmity.

24. It has to be noted that the petitioner had worked for more than 15 years. On the five charges levelled against him, 4 material charges found to have been not proved by the CGIT. Therefore, the CGIT ought to have exercised its discretion u/s 11-A of the I.D. Act. The workman in his earliest explanation did not deny the charge but as a contrary came up with the plea that he was not aware of the Rules of conduct. Infact Rules of Conduct itself has been marked by the Management for the first time by examining M.W. 1 and through him Exhibit M-4 was marked. If the other charges namely that he had actively associated with the business and was having indirect control over the business of his relative has failed to have been proved then the first charge is more of a technical nature. The Rule itself permits guaranteeing in a private capacity for the pecuniary obligations of another person with the prior permission of the appropriate authorities. Therefore, the CGIT was wrong in not exercising its discretion in terms of Section 11-A of the I.D. Act to interfere with the penalty of dismissal. Both the disciplinary authority and appellate authority imposed the penalty only on the basis that except Charge No. 4 being partly proved, other charges were proved, thought fit to impose the penalty of dismissal. But the CGIT having held charges 2 to 5 were not proved and the first charge alone were proved ought to have considered whether proving of first charge by itself will be enough for imposing the punishment of dismissal. Considering the fact that the workman had no prior record of any misnomer and also the fact that he had worked for more than 15 years, the CGIT ought to have granted relief instead of rejecting the dispute. In such circumstances, the impugned Award is hereby set aside. The writ petition is partly allowed, directing the second respondent to reinstate the petitioner in service. The fact that the petitioner is without employment from 31.8.2004 i.e., for the past 8 years itself can be a sufficient punishment. For that period, the workman will be eligible for 50% of the back wages. Further the service continuity will count for all other purposes, including seniority, promotion and other terminal benefits. No costs.