
**M. Thonthi Vs Presiding Officer, Central Govt. Industrial Tribunal Cum
Labour Court and Another**

Writ Petition No. 12196 of 2005

Court: Madras High Court

Date of Decision: Oct. 11, 2013

Citation: (2013) 4 LLJ 374 : (2014) LLR 145

Hon'ble Judges: K. Ravichandrabaabu, J

Bench: Single Bench

Advocate: K.M. Ramesh, for the Appellant; V. Karthic for T.S. Gopalan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandrabaabu. J.

1. The challenge in this writ petition is against the award of the Labour Court passed in I.D. No. 423 of 2001 wherein the claim of the petitioner

for reinstatement in service was rejected. The case of the petitioner is as follows:-

He joined the second respondent Bank as Clerk in the year 1982. On 18.6.1988 there was a surprise check of the Marakkanam Branch where

the petitioner was working as clerk. During the said surprise check, it was found that five jewels mortgaged by the customers were missing from

the safe locker. On 27.6.1988, the petitioner and the Assistant Manager were suspended pending enquiry. On 7.11.1988 a show cause notice was

issued to which he submitted his reply on 6.12.1988. On 8.3.1989 a charge memo was issued containing four charges. Consequently, an enquiry

was conducted wherein the petitioner was denied fair and reasonable opportunity to defend his case. The enquiry Officer submitted his report on

28.11.1989 holding the petitioner guilty of charges 1, 3 and 4. On 12.2.1990, the petitioner was served with a second show cause notice

proposing the punishment of dismissal from service. Consequently, the disciplinary authority passed the final order on 16.2.1990 imposing the

punishment of dismissal from service. The petitioner preferred an appeal before the Assistant General Manager. The appellate authority rejected

the appeal on 20.6.1990. Consequently, the petitioner raised an industrial dispute challenging the punishment. On 24.12.2001, the Tribunal passed

the impugned award and dismissed the I.D. by holding that the charges were proved against him.

2. The case of the second respondent Management is as follows:-

The second respondent Bank is a nationalised bank. As per the conditions of the employment, the employees of the bank are not entitled to avail

gold loans save with the permission of the Management. Gold jewels pledged with the Bank by the customers will be put in a sealed cover and the

same are kept in safe custody and the safe keys are held by two authorised officials of the Branch. The pledged jewels will be subjected to

periodical inspection. The petitioner was working as a clerk in Marakkanam Branch. During the relevant period the said branch had two officers,

three clerks and one sub-staff. On 16.6.1988, a surprise check was conducted and it was found that jewels pledged as security for the gold loan in

respect of three gold loan accounts were missing from the corresponding jewel loan packets. Immediately, a statement was prepared recording the

missing of the jewels and it was signed by the Branch Manager, the acting Branch Manger and the petitioner. On 21.6.1988 the petitioner had

returned the jewel weighing 16 grams missing from the packet relating to Gold Loan No. 18/273. He had given a letter on 21.6.1988 and informed

that he had to pledge the jewels to repay certain loans. Again, on 24.6.1988 he returned a jewel weighing 57.400 grams being the jewel pledged

relating to gold loan No. 18/8. On 14.7.1988, the petitioner returned the jewel weighing 24.600 grams pledged in respect of jewel loan No.

18/125. Similarly on 15.7.1988, the jewels weighing 66.400 grams covered by jewel loan No. 18/49 was returned by him to the Bank. On

12.10.1988, he returned the jewel weighing 120 grams pledged in respect of jewel loan No. 17/10. The petitioner admitted that he had removed

the jewels from the bank's safe in respect of jewel loan Nos. 17/10, 18/8, 18/49, 18/273 and 18/125.

3. One Subramaniam had availed an Agricultural loan of Rs. 6,000/- from the Bank. On 7.5.1986, the said person gave a sum of Rs. 1,000/- to

the petitioner for remitting it to the credit of his agricultural loan account. Though the petitioner had acknowledged the receipt of the said amount in

cash and made necessary entries in the pass book of the account holder, the said amount was not accounted for in the bank accounts and the

petitioner during the month of December 1986 i.e. after a period of seven months, altered the debit balance of the said agricultural loan account by

posting a credit entry of Rs. 1000 without any supporting voucher. Thus, the petitioner has not only misappropriated the amount of Rs. 1000 but

also tampered with the bank records.

4. He further posted a fictitious credit entry of Rs. 3,000 in a S.B. Account which was not backed by any voucher. As a result, the S.B. Account

was overdrawn to the extent of Rs. 2,864.25. Based on the above facts, a charge memo was issued and an enquiry was conducted where the

charges 1, 3 and 4 were proved. Consequently, on 16.2.1990, an order of dismissal from service was also passed. The petitioner did not raise the

dispute immediately and after more than four years he raised the dispute. Therefore, he is guilty for delay and laches.

5. Mr. K.M. Ramesh, learned counsel appearing for the petitioner submitted as follows:-

The Tribunal has found the enquiry as defective. Therefore, it cannot rely on any evidence let in during the domestic enquiry. The Tribunal

compared the evidence with that of domestic enquiry. Misappropriation was not proved before the Tribunal by letting in fresh evidence. There was

failure on part of the prosecution to examine crucial witnesses. The admission letter alleged to have been given by the petitioner was obtained by

the security officer under threat and the said officer was also not examined. The petitioner alone cannot open the locker as it could be opened by

two persons viz., Branch Manager and the Chief Cashier. The Branch Manager was awarded with lesser punishment of stoppage of increment

whereas the petitioner was awarded with a major punishment. Thus, the discrimination is writ large. The management witnesses 1 to 3 did not say

as to when the key was given to the petitioner prior to 18.8.1988. None of them have deposed that the petitioner had removed the jewels. The

modus operandi was not explained. The confession letters given by the petitioner were taken as evidence in the absence of any corroborating

independent witness in support of those letters. No witness was examined before the Tribunal to speak about the removal of the jewels. Section

11A of the I.D. Act was not properly exercised by the Tribunal. In support of the above submissions, the learned counsel for the petitioner relied

on the following decisions.

1. Neeta Kaplish Vs. Presiding Officer, Labour Court and Another, .

2. Management of Indian Oil Corporation Vs. Presiding Officer II Additional Labour Court and others, .

3. D. Vincent v. The Director of Government Examinations and another, 1987 Writ L.R. 69

4. Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others,

6. Per contra, Mr. V. Karthic, learned counsel appearing for the second respondent Management would submit as follows:-

The charges levelled against the petitioner were serious in nature viz., misappropriation of funds and falsification of accounts. Except charge No. 2,

all other charges were proved in the domestic enquiry. Only in respect of the first charge is concerned, there is a commonality between the

petitioner and other delinquents, whereas in respect of all other charges, they are in respect of individual action of the petitioner alone. Therefore,

the petitioner cannot plead discrimination with regard to quantum of punishment. In a domestic enquiry only the preponderance of probability has

to be seen and therefore it does not require a roving enquiry like a criminal court. The petitioner himself has given confession statement on

21.6.1988. Further through his letter dated 22.6.1988, the petitioner himself handed over the jewels to the bank. Again by letter dated 27.6.1988

he made another confession statement. Having made these three statements, by way of confession, the petitioner issued a letter on 6.12.1988, after

a period of six months, as an after thought denying the charges. The very conduct of the petitioner in returning the jewels to the Bank would falsify

all his contentions. Therefore, the review by this Court, that too being a limited one, is not at all warranted to be exercised in this case based on the

admitted facts and circumstances. The learned counsel in support of his submissions relied on the decision reported in The General Manager (P)

Punjab and Sind Bank and Others Vs. Daya Singh, .

7. Heard both sides.

8. The point for consideration in this writ petition is as to whether the order of dismissal passed against the petitioner and confirmed by the

Industrial Tribunal is sustainable?

9. The petitioner was working as a clerk in the Marakkanam Branch of the second respondent and a charge memo was issued against him on

8.3.1989 containing four charges. They are stated in brief, as follows:-

Charge No. 1:-The petitioner was officiating as Officer Cashier during the absence of permanent Chief Cashier and he was holding one set of safe

keys of cash and jewel safes during the relevant point of time. On 18.6.1988, the petitioner has removed the jewels from the safe locker weighing

about 284.400 gms. taking the advantage of his possession of both set of keys.

Charge No. 2:-The petitioner by obtaining a loan through a benami transaction had cheated the Bank.

Charge No. 3:-The petitioner misappropriated an amount of Rs. 1,000 remitted by a borrower of the Bank into his account and tampered with the

Bank records in order conceal the above misappropriation.

Charge No. 4:-The petitioner posted a fictitious credit entry of Rs. 3,000 in Account No. 1762 which was not backed by any voucher and it thus

had resulted in the savings account over drawn to the extent of Rs. 2,864.25.

10. Based on the above charges, a domestic enquiry was conducted and the enquiry Officer found the charges 1, 3 and 4 as proved. Thereafter,

an order of dismissal from service came to be passed which had culminated into filing of an industrial dispute raised before the Tribunal.

11. The Tribunal passed an order on preliminary issue and held that the domestic enquiry conducted by the management was vitiated. However,

the management was permitted to let in evidence afresh before the Tribunal to prove the charges levelled against the petitioner. Thus the

management had examined three witnesses viz., M.W. 1 to M.W. 3 and marked Exs. M-1 to M-20. The petitioner had examined one witness and

marked six documents as Exs.W1 to W6. The Tribunal has found that the petitioner was admittedly holding the post of officiating cashier on

18.6.1988 on which date the surprise check was made by one Sundaram who was the Branch Manger of Motchakulam Branch. It is seen that the

said Sundaram was examined as M.W.3. The petitioner except examining himself as W.W.1 has not examined any other independent witness.

The; as W.W.1 has admitted that he was functioning as officiating cashier on 18.6.1988 as the Chief cashier was on leave on that day. It is also

found by the Tribunal that the petitioner as W.W. 1 had admitted that during the surprise check made on 18.6.1988, five jewels pledged with the

Bank were found missing in the safe and for the said surprise check, himself and the Manager of the Bank got that safe opened with their

respective keys. The report prepared by the checking official who has been examined as M.W.3 was marked as Ex.M1. The said report was not

disputed by the petitioner. On the other hand, he had subscribed his signature in the said report along with the checking official. The Regional

Manager, Trichy directed an investigation and accordingly the same was conducted from 20.6.1988 to 22.6.1988 followed by submission of

report dated 24.6.1988. The said report was marked as Ex.M2. M.W.1 has spoken that during his investigation in the branch, the petitioner gave

a statement in his own handwriting dated 21.6.1988 and the same was enclosed with the report marked as Ex.M2. The very same witness also

stated that the petitioner gave another statement on 27.6.1988 which has been enclosed along with the second report marked as Ex.M3. A further

statement given by the petitioner on 28.6.1988 was also enclosed along with Ex.M3. M.W.1 has clearly spoken that on 21.6.1988 the petitioner

has accepted his involvement in this matter and had said that he removed the gold jewels from the five gold loan packets and pledged the same out

side. The petitioner had also given the said details in writing. The said statement was also annexed in Ex.M2. The petitioner had in fact as W.W.1

admitted that M.W.1 and M.W.3 came with him to three pawn brokers shops and local co-operative bank and on 21.6.1988 one jewel from

pawn broker Sajjan Kanwar at Marakkanam was redeemed. The pawn ticket was marked as Ex.W1. The petitioner has also admitted under

Ex.W5 that he only pledged those jewels and he came to know that they are the jewels pledged in the bank only after it was deducted by M.W.3.

12. No doubt, the petitioner, as an after thought, raised an objection that his statements were obtained under threat and coercion. The Tribunal has

rightly pointed out that if those statements were obtained under threat and coercion, he would not have stated as a witness that he has spent that

amount for the family planning operation of his wife at the time of her delivery. It is also pointed out by the Tribunal that if the statement was given

under threat and coercion, the petitioner would not have pledged those five jewels in his own name. Therefore, the Tribunal has rightly rejected the

contention of the petitioner that all his confession statements were given under threat and coercion.

13. Moreover, it is to be seen that though those statements were given on 21.6.1988, 27.6.1988, 28.6.2988, the petitioner has not retracted the

same immediately by sending any communication to the authorities. On the other hand he has only sent a letter on 6.12.1988 i.e. after a period of

six months. I am unable to appreciate the contention of the petitioner that his confession statements were obtained under threat and coercion

especially under the circumstances that the jewels were pledged by the petitioner in his own name before the private financiers or pawn brokers

and that the petitioner, admittedly, redeemed the same and handed over to the bank.

14. Likewise, in respect of the third charge is concerned, viz., the misappropriation of Rs. 1000 and falsification of the accounts, it is the

categorical finding of the Tribunal that the petitioner has deposed in the domestic enquiry that he has received Rs. 1,000/- from the said person by

name one Subramanian and handed over the same to one Kannan Gopal. This observation of the Tribunal is being challenged before this Court by

contending that the Tribunal ought not to have relied on the statement given by the petitioner during domestic enquiry having found that the

domestic enquiry is vitiated.

15. But a perusal of the order passed by the Tribunal more particularly at paragraph 5 would show that it has not come to such conclusion based

on the statements made before the domestic enquiry alone. On the other hand, it has taken into consideration of the statement made by M.W.2

before the Tribunal and also by examining Exs.M10 to M14 and came to the conclusion that the charge levelled against the petitioner was proved.

It is also specifically pointed out by the Tribunal that nothing has been elicited in the cross examination of M.W.2 to discredit his evidence in chief.

It is also found by the Tribunal that the petitioner in his evidence has admitted with regard to the said charge and he has not given any explanation.

16. In respect of other charge of making fictitious entry in the S.B. Account is concerned, the Tribunal has considered the evidence of M.W.2 and

also considered the documents marked as Exs.M16, 17, 18, 19 and 27 and came to the conclusion that the oral and documentary evidence in

respect of this charge proved that the petitioner is guilty of the said charge also.

17. Therefore, I am of the firm view that the contention raised by the learned counsel for the petitioner is not correct and the Tribunal has rightly

rejected the case of the petitioner based on the evidence placed before it both oral and documentary wise.

18. The learned counsel for the petitioner relied on the decision reported in Neeta Kaplish v. Presiding Officer, Labour Court, (supra) to contend

that the Tribunal was not justified in relying on the evidence let in during the domestic enquiry. The Apex Court has held at paragraph 18 of the said

decision as follows:-

18. In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be

defective, the Tribunal can call upon the Management or the employer to justify the action taken against the workman and to show by fresh

evidence, that the termination or dismissal order was proper. If the Management does not lead any evidence by availing of this opportunity, it

cannot raise any ground at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be

justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the Management,

the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.

19. As already discussed supra, a perusal of the order passed by the Tribunal would show that the it has not relied on the evidence let in during

domestic enquiry to come to the conclusion. On the other hand, it has taken into consideration of the evidence let in before it by the parties and

ultimately decided the issue against the workman. Therefore, the above said judgment relied on by the learned counsel is, in fact, not helping him in

any manner as admittedly, the management was given permission by the Tribunal to let in fresh evidence before the Tribunal and admittedly the

management had let in both oral and documentary evidence as stated supra-When finding is rendered based on those materials, then the learned

counsel for the petitioner cannot have any grievance with regard to the procedure adopted by the Tribunal.

20. The next decision relied on by him is reported in Management of Indian Oil Corporation v. Presiding Officer, II Additional Labour Court and

Others, (supra). This decision is relied on to contend that the petitioner was discriminated while awarding the punishment, when other person was

given lesser punishment in respect of the same charges. I am unable to appreciate the said contention of the learned counsel for the simple reason

that the charge memo given to the petitioner contains four charges out of which only the first charge is having a commonality between the petitioner

and other person. Insofar as the other three charges are concerned, they are in respect of the individual action of the petitioner and when such

charges are serious in nature, viz., misappropriation, unauthorised removal of jewels from the bank safe and falsification of accounts, I find that the

punishment imposed on the petitioner cannot be questioned on the ground of discrimination by relying on the above decision of the Division Bench

of this Court.

21. The other decision relied on by the learned counsel is reported in D. Vincent v. The Director of Government Examinations and another,

(supra). A perusal of the said decision would show that it is in respect of fabrication of mark sheet wherein the Honourable Division Bench has

observed that in a departmental proceedings though strict standard of proof as necessary in a case of criminal prosecution cannot be insisted upon,

at the same time, it would be wholly improper to hold a person guilty of such a charge except on sufficient and reliable material to prove the same.

The facts of the said case would show that there was no sufficient materials placed against the person charged as if he has falsified the document.

But the facts of the present case are totally different and distinguishable, especially under the circumstances the management had let in evidence to

prove the charges and that the petitioner himself has admitted and such admission is well established by his own conduct of bringing the jewels

back to the bank. Therefore, I find no relevancy of the said decision to the facts and circumstances of the present case.

22. The other decision relied on by the learned counsel for the petitioner is reported in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor

Sabha, (supra). The learned counsel, by relying on the said decision, contended that even though the Tribunal failed to exercise the discretionary

power u/s 11A of the I.D. Act, this Court can very well exercise such power and grant the relief to the petitioner. I am unable to appreciate the

said contention raised by the petitioner's counsel by taking note of the seriousness of the charges levelled against the petitioner which were found

proved. Thus, when there is no doubt in the mind of this Court with regard to the proportionality of the punishment, there is no necessity for this

Court to exercise the power u/s 11A which is only a discretionary power.

23. Per contra, the learned counsel appearing for the respondent Management relied on the decision reported in General Manager (P), Punjab and

Sind Bank and Others v. Daya Singh, (supra) to contend that strict rules of evidence are not applicable to the departmental enquiry proceedings.

The relevant paragraphs 25 and 26 of the said decision are extracted hereunder:-

25. As held in Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai, the scope of judicial review for the High Court in

departmental disciplinary matter is limited. The observation of this Court in Bank of India and Another Vs. Degala Suryanarayana, are quite

instructive:

Strict rules of evidence are not applicable to enquiry proceedings. The only requirement of law is that the allegation against delinquent officer must

be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the

gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry

proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental

enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such

that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or

weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority,

the same has to be sustained. In Union of India (UOI) Vs. H.C. Goel, the Constitution Bench has held:

23. The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole

of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This

approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the conclusion

follows or not.

26. In a number of cases including *State Bank of India vs. Bela Bagchi* (supra) this Court has held that a bank employee has to exercise a higher

degree of honesty and integrity. He is concerned with the deposits of the customers of the Bank and he cannot permit the deposits to be tinkered

with in any manner.

A careful consideration of the above facts and circumstances and also on going through the order passed by the Tribunal, I am of the view that the

Tribunal has rightly rejected the case of the petitioner for reinstatement and the order of dismissal from service does not suffer from any irregularity

or infirmity. I find no perversity in the order of the Tribunal. Accordingly, the writ petition deserves no merit and the same is dismissed. No costs.