

(2009) 06 MAD CK 0265

Madras High Court

Case No: W.A. No. 518 of 2009

The Management of South
Indian Bank Limited and The
Management of South Indian
Bank Limited

APPELLANT

Vs

The Deputy Commissioner of
Labour (Appeals), R. Visalakshi,
R. Manoranjitham and R.
Janarthanam

RESPONDENT

Date of Decision: June 12, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Tamil Nadu Shops and Establishments Act, 1947 - Section 41, 41(2)

Citation: (2009) 4 CTC 875

Hon'ble Judges: S.J. Mukhopadhyaya, J; N. Kirubakaran, J

Bench: Division Bench

Advocate: Ravindran for M/s. T.S. Gopalan and Co, for the Appellant;

Final Decision: Dismissed

Judgement

N. Kirubakaran, J.

This Writ Appeal has been filed against the order of the learned Single Judge dated 19.01.2009 made in W.P. No. 1726 of 1999 confirming the order of the first respondent in TSE Case No. 11/1995 dated 29.9.1998. The facts of the case are as follows:

The appellant is the management of South Indian Bank Limited having its head quarters at Thrissur, Kerala State. The husband of the second respondent and the father of the respondents 3 and 4 was employed in the appellant-Bank and was working as Additional Branch Manager in the appellant-Pollachi Branch. He was a

handicapped person and was also a severe diabetic patient. For commission and omission, he was issued with a Charge Memo dated 11.12.1992 which contained 8 charges against him. Before that, he was suspended on 24.6.1992.

2. In response to the charge-sheet, the employee gave a reply on 21.12.1992. An enquiry was conducted and during enquiry eight witnesses were examined. After an elaborate enquiry, the enquiry officer found that the charges against the delinquent officer were proved, except Charge No. 7. Accepting the report of the Enquiry Officer, the appellant-Bank dismissed the officer on 10.2.1995. A copy of the report was forwarded to the officer and a personal hearing was afforded. Pursuant to the dismissal order dated 6.3.1995, the delinquent officer preferred an Appeal to the Appellate Authority and the same was rejected by an order dated 22.5.1995. Again a representation was made to the Board of Director by the officer on 20.6.1995 and the said representation was rejected also by the Board of Director on 2.9.1995, which was communicated to the Officer on 14.9.1995.

3. The officer preferred an Appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to the Appellate Authority namely the first respondent herein and the said Appeal has been numbered as TSE Case No. 11/95. During the pendency of the Appeal, the delinquent officer passed away on 19.4.1996 and as a result, respondents 2 to 4 were brought on record before the Appellate Authority.

4. Before the first respondent-Appellate Authority, on behalf of the respondents 2 to 4, about 10 documents were marked as Exhibits A1 to A10 and about 27 documents were marked on behalf of the appellant as Exhibits R1 to R27. After meticulously considering the matter, the first respondent Appellate Authority set aside the order of termination dated 6.3.1995 issued to Rajavelu (the husband of the second respondent and father of the respondents 3 and 4) on the ground that the charges made against him were to be proved in domestic enquiry, except the Charge No. 7 and accordingly, the management was directed to reinstate the officer back in service with continuity of service, full back wages and all other attendant benefits.

5. Challenging the order of the first respondent-Appellate Authority dated 29.9.1998, the Writ Petition No. 1726 of 1999 was filed by the management on the ground that the Appellate Authority should not have ordered re-instatement by disagreeing with the findings given by the Enquiry Officer, as there was no basis to disagree with the findings of the Enquiry Officer. Moreover the charges made against the officer were very grave and serious in nature. Hence the order of the Appellate Authority should be set aside. Moreover the appellant also alleged that the delinquent officer was under the influence of alcohol and had threatened some of the customers of the Bank, which would go against the interest of the Bank.

6. The learned Judge after hearing both parties dismissed the Writ Petition finding that the Appellate Authority had gone into the evidence and the records and came to the independent conclusion that the charges were not proved against the officer

and there was no necessity to interfere with the order. The learned Judge also relied upon a judgment of this Court reported in [I.K. Lodi Vs. The Appellate Authority under Tamil Nadu Shops and Establishments Act and Bharat Overseas Bank Ltd.,](#)

7. Challenging the said order of the Single Judge passed on 19.1.1999, the above Writ Appeal has been preferred by the Management. Heard Mr. R. Ravindran, the learned counsel for the appellants and perused the records.

8. The learned counsel strenuously argued that the evidence required in proof of charges in domestic enquiry is one of preponderance of probabilities, whereas the Appellate Authority went into the minute details and disagreed with the Enquiry Officer and hence the Appellate Authority's order has to be set aside. He further submitted that the findings of the Enquiry Officer cannot be interfered with merely because an another view from that Enquiry Officer is possible. The findings cannot be set aside unless otherwise it is perverse. Even for setting aside the findings, cogent findings have to be given as to why he was reversing the findings of the Enquiry Officer.

9. The learned counsel stressed that the appellant being a Bank, the delinquent officer should have behaved properly with the customer, since the service of Bank is customer oriented one. Any lenient view in the matter of deviation of normal behavior of the officer would tell upon administration of the Bank.

10. No doubt, the Enquiry Officer's findings cannot be set aside unless it is perverse that is to say no evidence or lack of evidence. Even as per contention of the Bank, the Appellate Authority went into details of the charges meticulously, which is proved by ground No. 4. The Appeal ground No. 4 reads as follows:

4. A reading of the impugned order of the first respondent clearly disclose that he was looking for clinching evidence, as standard of proof required in Criminal proceedings. In other words, the yardstick adapted by the first respondent to determine the proof of charges levelled against the delinquent officer is far beyond proof of preponderance of probability. Hence, the impugned order of the first respondent instead of being set aside, it was erroneously upheld by the learned Single Judge.

Hence, the Appellate Authority's order is based on facts and evidence and the same cannot be faulted.

11. As per Section 41 of Tamil Nadu Shops and Establishments Act 1947, the decision of the Appellate Authority, shall be final and binding the authorities. A perusal of grounds of Appeal filed by the appellants would demonstrate that the Appellate Authority had looked into the oral and documentary evidence in a detailed manner. Moreover the Appellate Authority has given detailed findings as to how the First Appellate Authority disagreed with the findings of the enquiry officer and gave an

independent elaborate cogent reason for setting aside the order of dismissal.

12. The learned Single Judge also disagreed with appellant's case and dismissed the Writ Petition relying upon the aforesaid judgment viz. *I.K. Lodi v. Appellate Authority* under the [I.K. Lodi Vs. The Appellate Authority under Tamil Nadu Shops and Establishments Act and Bharat Overseas Bank Ltd.](#), which is extracted as follows:

We have already pointed out that sub-section (3) of Section 41 of the Act makes it clear that the decision of the Appellate Authority shall be final and binding on both the parties. Further, it is not the case of the Bank that the Appellate Authority has not looked into the oral and documentary evidence, on the other hand, the authority considered each charge with reference to the oral and documentary evidence let in by both sides and on proper appreciation of the materials, arrived at a specific conclusion, in such circumstances, as observed in the decision reported in 1999 (2) L.L.M. 74 (vide supra) it is not a case of no evidence or perverse finding for interference by the learned Judge, exercising jurisdiction under Article 226 of the Constitution of India.

13. Under Article 226 of the Constitution of India, the question of fact cannot be determined as stated above. The question of fact was already decided by the Appellate Authority and the same was confirmed by the learned Single Judge. Hence there can not be any interference by this Court in Appeal. The law has already been laid down by the Supreme Court with regard to exercise of power under Articles 226 and 227 of the Constitution of India.

14. The Hon'ble Supreme Court in the *Rahimal (Dead) by LRs and Anr. v. Deputy Director of Consolidation and Ors.*, (2002) 10 SCC 94 has held that the finding recorded and affirmed by the High Court is the finding of fact and it cannot be assailed in the Appeal. Similarly, in this case, the findings given by the Appellate Authority and confirmed by the learned Single Judge of this Court, is a finding of fact and cannot be interfered with by this Court in Appeal.

15. In [Ranjeet Singh Vs. Ravi Prakash](#), it has been held by the Supreme Court that the High Court cannot act like an Appellate Court and re-appreciate or re-evaluate the evidence while exercising Certiorari or Supervisory jurisdiction. This Court cannot act as an Appellate Forum over the judgment of the lower authority under Article 226 of the Constitution of India.

16. The Apex Court in the case reported in [Shamshad Ahmad and Others Vs. Tilak Raj Bajaj \(Deceased\) through LRs. and Others](#), has held as follows:

38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a Court of Appeal or a Court of error. It can neither review nor re-appreciate, nor re-weigh the

evidence upon which determination of a Subordinate Court or inferior Tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior Court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts and inferior Tribunals within the limits of law.

17. In [D.N. Banerji Vs. P.R. Mukherjee and Others](#), the Hon"ble Supreme Court laid down that unless there was miscarriage of justice or flagrant violation of law calling for intervention, it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. The above principle of law was relied on and approved by the Supreme Court in [Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram](#),

It is true that in exercise of jurisdiction under Article 227 of the Constitution, the High Court would go into the question of fact or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court also should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court should not interfere with finding within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest injustice.

18. The appellant has to make out an extraordinary case before this Court to interfere with the findings of the facts by demonstrating through evidence, both oral and documentary, as to how the Appellate Authority and learned Single Judge have not considered admissible evidence and considered inadmissible evidence and appreciated the facts properly so as to warrant interference by this Court. The appellant has to make out a case with concrete materials that the findings reached by the first respondent-Appellate Authority is perverse and based on no evidence. As stated above, Judicial scrutiny/Judicial review under Article 226 is very limited and it should be exercised only when the situation/facts warrant, whereas in this case, the appellant has not made out any ground to interfere with the findings of the learned judge, affirming the order of the Appellate Authority to reinstate the officer.

19. Apart from the above reasoning, the delinquent officer passed away during pendency of the Appeal before the first respondent and the appellant has been fighting against the legal representatives of the deceased officer. In those circumstances, as a magnanimous employer, the mighty Bank should, on its own, have come forward to settle the matter with the LRs. of deceased employee liberally, which is expected of a fair and reasonable Bank management. We hope the Bank would act in the manner as suggested above. In the light of the above, the Writ Appeal is dismissed. However there will be no order as to the costs. Consequently, connected M.P. No. 1 of 2009 is also dismissed.