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W.A.Nos.116 & 117 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.02.2022
Pronounced on	25.03.2022

CORAM :

The Honourable Mr.Justice M.DURAISWAMY

and

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

W.A.Nos.116 & 117 of 2016

M.Gowrishankar

... Appellant in both W.As

Vs.

1. The Deputy General Manager (SME),

State Bank of India,

Local head Office,

Circle Top House,

No.16, College Lane,

Chennai – 600 005.

... 1st Respondent in W.A.No.116 of 2016

and 2nd Respondent in W.A.No.117 of 2016

2. The Assistant General manager,

State Bank of India,

Mylapore Branch,

Chennai – 600 004.

... 2nd Respondent in W.A.No.116 of 2016

and 3rd Respondent in W.A.No.117 of 2016

3. The Presiding Officer,

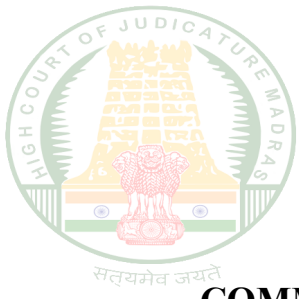
Central Government Industrial

Tribunal – cum - Labour Court,

Chennai.

... 3rd Respondent in W.A.No.116 of 2016

and 1st Respondent in W.A.No.117 of 2016



W.A.Nos.116 & 117 of 2016

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COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, praying to set aside the order passed by this Hon'ble Court in W.P.Nos.24952 of 2012 and 2529 of 2013 dated 17.10.2014 and questioning the Final Award in I.D.No.90 of 2006 on the file of the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court respectively.

For Appellant : Mr.N.G.R.Prasad
in both W.As

For Respondents 1 & 2
in W.A.No.116 of 2016 : Mr.Anand Gopalan
and Respondents 2 & 3
in W.A.No.117 of 2016

For Respondent 3 in
W.A.No.116 of 2016 &
Respondent 1 in : Labour Court
W.A.No.117 of 2016

COMMON JUDGEMENT

J.SATHYA NARAYANA PRASAD, J.

Writ Appeal No.116 of 2016 is directed against the order passed by the learned Single Judge in W.P.No.24952 of 2012 dated 17.10.2014, allowing the Writ Petition and W.A.No.117 of 2016 is directed against the order passed by the learned Single Judge in W.P.No.2529 of 2013 dated



17.10.2014, dismissing the Writ Petition.

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2. Heard Mr.N.G.R.Prasad, learned counsel appearing for the appellant and Mr.Anand Gopalan, learned counsel representing Mr.T.S.Gopalan on behalf of 1 & 2 respondents in Writ Appeal No.116 of 2016 and 2 & 3 respondents in W.A.No.117 of 2016.

3.The facts of the case are as follows:-

(i) The workman/appellant joined the service of the State Bank of India as Daftry on 09.06.1986 and he belongs to the Scheduled Caste Community. While he was working as sub-staff in the Adyar Branch, on 15.07.2004, during office hours at 02:00 p.m., the workman/appellant left the Bank premises without prior permission from his Superior Officer and returned with the outsiders. When the workman/appellant returned to the Bank along with the outsiders, the armed guards at the entrance of the Bank premises viz., one Maheswaran and one Chandran resisted them, but, the workman/appellant shouted at them by saying “ I have taken permission from the Assistant General Manager two days earlier, who are you to question me?”. Thereafter, with the help of the outsiders, the workman/appellant hit



the nails on the wall panel at the entrance hall of the Bank in the ground floor and hung a portrait of Dr.B.R.Ambedkar, without prior permission from the management. Hence, on 16.07.2004, a Charge Memo was issued to the

workman/appellant by the management referring to the above incident and calling upon him to explain as to why action should not be taken against him.

(ii) On 19.07.2004, at about 3.00 p.m, he brought about 25 persons to the Bank premises to show his protest against the Charge Memo issued to him. When all of them wanted to enter the bank premises, to avoid any confrontation, two persons of the group viz., one Kumari Arun and another person were permitted to enter into the bank and allowed to meet the Assistant General Manager. When they met the Assistant General Manager, they shouted at him by saying “if you are acting at the behest of the higher officials, name them, whether in Mumbai, Delhi, Kolkatta, Bangalore or Chennai, we will ensure that they do not go back home”. The workman/appellant has also instigated SC/ST posters, placing tamil placards at Adyar Branch as well as many other branches in Chennai, demanding the Government of Tamil Nadu to arrest the Deputy General Manager of the State Bank of India and the Assistant General Manager of Adyar Branch, State



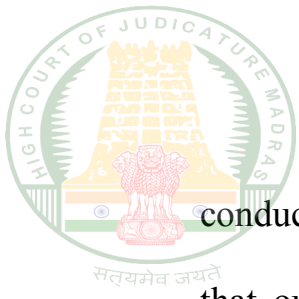
Bank of India.

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(iii) On 02.08.2004, during office hours, the workman/appellant had, in his possession, a bunch of pamphlets in Tamil, demanding the arrest of the Deputy General Manager of Zonal Office, Chennai and Assistant General Manager of the Branch Office and had shown the same to the employees of the Bank.

(iv) A separate register was maintained for recording the timing, when the employees enter and leave the office. From the entries made in the said register, it was noticed that on very many occasions, the workman/appellant left the office during working hours without the permission of the superiors.

(v) On 21.09.2004, a show cause notice, with eleven charges, were issued to the workman/appellant, calling upon him to show cause as to why disciplinary action should not be initiated against him. On 04.10.2004, the workman/appellant gave a reply to the said show cause notice. Since, it was not satisfactory, an Enquiry Officer was appointed and the workman/appellant was asked to appear for the enquiry. In the enquiry, eight witnesses were examined and thirty two documents were produced on the side of the respondents/management and five witnesses were examined and five documents were produced on the side of the workman/appellant. After



conducting the enquiry, by order dated 24.08.2005, the Enquiry Officer held that out of eleven charges, the charge Nos.1 to 6, 8 & 9 were proved and Charge No.7 was partly proved and Charge Nos.10 and 11 were not proved. An opportunity was given to the workman/appellant to show cause against the findings of the proposed punishment of dismissal from service. Thereafter, on 02.12.2005, the Disciplinary Authority (Assistant General Manager, Mylapore Branch), passed an order dismissing the workman/appellant from service.

(vi) The appellant challenged the above dismissal order by filing an appeal before the Appellate Authority viz., Deputy General Manager (SME), Local Head Office, Chennai. In the appeal, the punishment of dismissal was modified into one of removal from service with superannuation benefits by showing leniency.

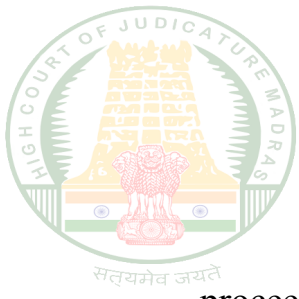
(vii) Thereafter, the workman/appellant raised an Industrial Dispute, challenging the punishment of removal from service. The Government of India, by order dated 04.12.2006, referred the matter to the Central Government Industrial Tribunal-cum-Labour Court, Chennai (3rd respondent herein) and the same was numbered as I.D.No.90 of 2006 on the file of the said Tribunal.



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(viii) Before the Tribunal, the workman/appellant examined himself as W.W.1 and marked sixty documents as Ex.W.1 to W.60. On the side of the respondents/management, no evidence was adduced. The Tribunal, after hearing both the sides, passed an award dated 15.05.2009, holding that the punishment of removal from service awarded to the workman/appellant is just and proper and the workman/appellant was not entitled to any relief.

(ix) Aggrieved over the above Award, the workman/appellant filed a Writ Petition in W.P.No.21623 of 2009 before this Court. In the said Writ Petition, the workman/appellant had contended that the Presiding Officer of the Tribunal is not familiar with Tamil and his mother tongue is Malayalam and during the proceedings, the translation copies of the enquiry proceedings were not available before him. Hence, by taking note of this fact, the said Writ Petition, the learned Single Judge had come to the conclusion that the Presiding Officer of the Tribunal could not have applied his mind in the proceedings, which was conducted in Tamil. Thus, the learned Single Judge, by setting aside the award dated 15.05.2009, remanded the matter to the Tribunal with a direction to dispose of the case within a time frame and also directed the workman/appellant to make English Translation of the enquiry proceedings, which were in Tamil.



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(x) After remand, the English translation copies of the enquiry proceedings were furnished to the Presiding Officer of the Tribunal. On considering all the materials placed before the Tribunal, after having come to the conclusion that the enquiry was conducted in a fair and proper manner and the finding that the workman/appellant is guilty of charge Nos. 1 to 6, 8 & 9 are just and proper, the Tribunal had passed an award on 30.04.2012 to reinstate the workman/appellant into service without backwages, but with continuity of service and all other attended benefits, by invoking the powers under Section 11A of the Industrial Disputes Act, 1947, observing that the workman/appellant should be given some chance to correct himself and repent his past thereby enabling him to be a righteous person.

(xi) Aggrieved over the award passed by the Tribunal, the respondent/management has filed the Writ Petition in W.P.No.24952 of 2012. Aggrieved over the withholding of backwages, the workman/appellant has also filed a Writ Petition in W.P.No.2529 of 2013.

4. The learned counsel appearing for the workman/appellant contended that the workman/appellant was removed from service mainly on the charge of hanging up the portrait of Dr.B.R.Ambedkar and some other charges were



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added in order to impose the punishment of removal from service. He further contended that the Tribunal, without properly appreciating the material documents produced by the workman/appellant in the enquiry, had passed the impugned order, withholding backwages as punishment to the workman/appellant. The workman/appellant belongs to the Scheduled Caste Community, which is a suppressed class, with a bona fide thought, put up the photo of Dr.B.R.Ambedkar, father of the Indian Constitution, in the Adyar Branch Office of SBI, only on the oral permission given by the Assistant General Manager of this Bank; but, in order to victimize the workman/appellant, for no fault on his part, the respondent/management served a Charge Memo against the workman/appellant mainly on the allegation that the workman/appellant brought outsiders into the Bank premises and hit a nail on the wall of the bank and hanged a photo of Dr.B.R.Ambedkar, without the permission of the superior officers; but, this allegation was split into eleven charges, only with an intention to victimize the workman/appellant.

5. The learned counsel invited the attention of this Court to each of the charges and findings of the Tribunal as well as the findings of the Enquiry



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Officer and submitted that the Tribunal has willfully failed to re-appreciate the evidence and the documents produced by the workman/appellant in support of his case. The learned counsel further submitted that the Tribunal verbatim concurred with the findings of the Authority in respect of all charges and by invoking Section 11A of the Industrial Disputes Act, 1947, directed for reinstatement of the workman/appellant, but without backwages.

6. The learned counsel for the workman/appellant further invited the attention of this Court to paragraph 14 of the impugned award passed by the third respondent/ Tribunal, that the Tribunal had come to the conclusion that the charges are not proved against the workman/appellant and that the Enquiry Officer proceeded on assumption and presumption. The charges were not proved and no heinous crime was committed by the workman/appellant and he has to be reinstated into service by invoking Section 11A of the Industrial Dispute Act, 1947. But after coming to such a conclusion, in the subsequent paragraphs, the Tribunal had taken a different view against the workman/appellant.

7. The learned counsel for the appellant further submitted that the



Central Government Industrial Tribunal reiterated the findings of the Disciplinary Authority/Appellate Authority of the Bank, without discussing the evidence, while passing the Award dated 30.04.2012, after remand, thereby not discharged the duties cast upon it under the Statute, namely, the duties under Section 11A of the Industrial Dispute Act, 1947, as an “Appellate Authority” and the Tribunal failed to exercise the power vested under Section 11A of the Industrial Dispute Act, 1947 by re-appreciating the evidence adduced by the workman/appellant.

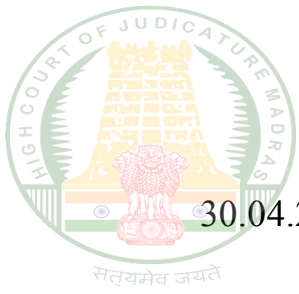
8. The learned counsel further submitted that prior to the introduction of the Section 11A of the Industrial Dispute Act, 1947, the Industrial Tribunal/Labour Courts cannot re-appreciate the evidence as an Appellate Authority and now Industrial Tribunal/Labour Courts have to re-appreciate the entire evidence while adjudicating the Industrial Dispute relating to the non-employment of the workman. But in the case on hand, the Central Government Industrial Tribunal proceeded on the basis of the law, that existed prior to insertion of Section 11 A of the Industrial Dispute Act, 1947, that is why, the Tribunal came to the conclusion that the charges were proved. Had the Central Government Industrial Tribunal re-appreciated the evidences as per Section 11 A of the Industrial Dispute Act, 1947, it would



have come to a different conclusion. But it proceeded as if it has very limited authority/jurisdiction. There were many material evidences available in favour of the workman/appellant, but those material evidences were not referred by the Tribunal as there was no re-appreciation of the evidence and no reference to the defence witnesses at all.

9. The learned counsel further submitted that the learned Single Judge has applied the law that existed prior to the introduction of Section 11A of the Industrial Dispute Act, 1947 and that change has been taken on the Section 11A of the Industrial Dispute Act, 1947. Further, the learned Single Judge had erroneously held that the Central Government Industrial Tribunal had interfered with the punishment of removal from service solely on the ground of sympathy. He also submitted that the Central Government Industrial Tribunal only interfered with the punishment by invoking Section 11 of the Industrial Dispute Act, 1947 but failed to re-appreciate the evidence as an Appellate Authority.

10. In Paragraph 18 of the Award the Tribunal dealt with the evidence and recorded its findings as to the guilt. Paragraph 18 of the Award dated



30.04.2012 is extracted hereunder.

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“18. The question as to whether or not the charges have been proved is to be examined. Regarding Charge No.1..that is leaving of bank premises at 0200 PM without permission and returning only at about 0300 PM, from the evidence of PW1 and PW2_it could be found proved that the workman brought the outsiders to the branch on 15.07.2004 and that he was not inside the branch just before 0300 PM. Direct evidence though lacking, from circumstantial factors centering around the incident and spoken to by the witnesses it could be found to be so. Any material logically probative to a prudent mind which is reliable and credible can lead to such a conclusion. Regarding Charge No. 2, that is shouting and making false statements to the Security Guards, etc. there is the version of PW2 which is furnishing-sufficient material. That portrait was hung is virtually admitted by petitioner. That the AGM had granted permission cannot be accepted because in that case he would not have proceeded against the Security Guard calling for explanation Regarding Charge No. 3 that the workman arranged hitting of nails and caused damage to the bank's property is proved from the evidence though the extent of damage is not. specified. Regarding Charge No. 4, that is hanging of portrait of Bharat Ratna Dr. Babasaheb Ambedkar without permission, the same evidence of PW1 and PW2 amply support the charge to have been true apart from the virtual admission of petitioner. Regarding Charge No. 5, that the workman having arranged to send 25 persons to the bank premises on 19.07.2004 whereof 2 persons alone have been



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permitted and they did threaten the AGM, is supported by the evidence of PW5 and PWZ where the link and causation for such persons to meet the AGM. and have a talk with him about the action taken against the workman from being the 'workman alone cannot be lost sight of... the for the fact that the said act is not, and cannot be occasioned without the nexus and instigation from the part of the workman who is a member of SEWA whose grievance was then sought to be redressed. In order to appreciate the evidence it is pertinent to note that in any testimony given by a witness there would normally occur marginal or discrepancies or omissions or in the case of a number of witnesses interse their versions which have to be ignored. In other words, in the appreciation of evidence, allowances have to be given to marginal discrepancies or omissions in their evidence which is trite in law. It is also possible to rely on statutory presumptions available under the Indian Evidence Act. Regard having had to the normal human conduct it is also only to be expected from the workman to have had recourse to such a method of arranging by instigating the collected-union persons to approach the AGM to ventilate his grievances. So viewed also, the workman cannot be totally a stranger to the action. Regarding Charge No. 6 that is spoiling the image of the bank by spreading wrong information etc. and distorting the truth, it is explained by the Circle CGM in his letter dated 27.07.2004 addressed to SEWA that it is unintentional and not meant as disrespectful. The objection was to the act of hitting nails causing damage in a place not intended for the purpose. Defence witnesses have not alleged



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any such disrespectful comments couched by the AGM. The workman is proved to have distorted truth to the dismay of the Management As to whether the workman instigated In the pasting of posters it could well be presumed that he did it because for every action on behalf of the workman thwarted by the Union, his instigation is there which is lawful to presume. Lawful presumptions duly drawn can be based for discussing preponderance of probability. On a preponderance of probability also Charge No. 6 could be found proved. Charge No. 7 is not held proved by the Appellate-Authority. Regarding Charge No. 8, that is early leaving of the office without permission of the bank, there is PEX.24 letter issued by PW6 to the effect that the workman used to leave the branch around 0130-0200 PM daily and not coming back after lunch which he did not choose to correct in spite of being pointed out. That being the case a disciplinary Register emerging formation and being maintained because of the workman cannot be ruled out and there is nothing unusual in it. Thus Charge No. 8 is also only to be held as proved. Regarding Charge No. 9, that is making of alterations in the Attendance Register by overwriting, on this aspect the... version of the witnesses ylz. PW4, PW6 and PW6 of the management are only to be believed. The misconduct is only to be held as proved. There is no substance in the arguments of the petitioner. The complaint regarding the alleged irregularities discernibly is not against Sri Arun, AGM but was against another AGM. Giving no reply to the complaint denying the irregularities cannot be found material enough to hold that the action against the petitioner is malafide. Charge



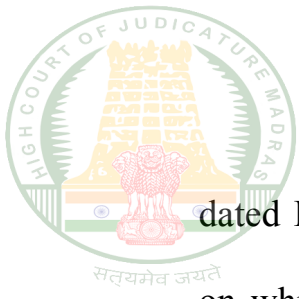
No. 10 & 11 have not been held proved by the Enquiry Officer.

11. The learned counsel further submitted that the Section 11A was incorporated in the Industrial Dispute Act, 1947 by Section 3 of the Industrial Disputes (Amendment) Act 1971. The newly inserted Section 11 A is extracted hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman. on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

12. The Central Government, by notification No.F.S.110-13/1/71-LRI



dated December 14, 1971, fixed the 15th day of December, 1971 as the date on which the said Act came into force. Accordingly, the amendment came into force with effect from 15.12.1971 and the same has introduced various amendments to the Act. In particular by Section 3, it inserted the new Section 11A in the Act which is extracted above.

13. A Division Bench of this Court in **Workmen Engine Valves Limited V. Engine Valves Limited**, reported in **1983-II-LLJ 232** has held in paragraph 5 that the Industrial Tribunal/Labour Courts have power to re-appreciate the evidence under Section 11-A of the Industrial Dispute Act and the same is extracted hereunder:

“5. On the scope of applicability of the section 11A, the earliest of the decisions is that reported in Workmen of Firestone Tyre & Rubber Co. V. Management (1973-I L.L.J. 278). It was held therein by the Supreme Court that:

“... The words in the course of the adjudication proceedings Tribunal is satisfied that the order of discharge of dismissal was not the justified clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was original a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal at that the finding of



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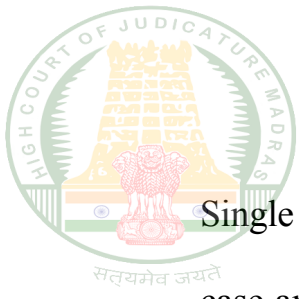
misconduct, is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd, case, [1958-1 L.L.J. 260) can no longer be invoked by an employer. Tho Tribunal is now at liberty to consider not only whether the Finding of misconduct recorded by an employer in correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of satisfaction of the employer, has ceased to be so and now it is the satisfaction of the Tribunal. that finally decides the matter."

It then held that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had not hold an enquiry or the enquiry held by him is found to be defective. Then it proceeded to hold:

".... To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself in not proved or that the misconduct proved or not warrant the punishment of dismissal or discharge. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman any lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by S.11A".

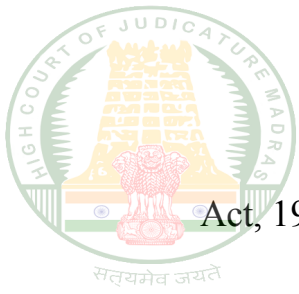
Hence, the contention raised that the stage for interference under S.11A by the Tribunal is reached, only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer, was rejected, and held as above."

14. The learned counsel for the appellant contended that the learned



Single Judge failed to apply law laid down by the Apex Court in Firestone's case and the judgment of the Division Bench of this Court in Engine Valves's case and failed to see as to whether the Central Government Industrial Tribunal acted as an appellate Court while passing the Award dated 30.04.2012 in I.D.No.90 of 2006.

15. The learned counsel for the workman/appellant expressed that the Central Government Industrial Tribunal only interfered with the punishment by invoking Section 11A of the Industrial Dispute Act, but failed to re-appreciate the evidence as an Appellate Authority/Court. In Workman Engine Valves Limited V. Engine Valves Limited, reported in 1983-II-LLJ 232, the Division Bench of this Court in paragraph 32 held that the District Judges and senior Judicial Officers are posted to function as Presiding Officers of Labour Courts and they could not in a haphazard or cursory manner touch upon the evidence on record in a general way and uphold the findings of the Enquiry Officer. The Presiding Officers of the Industrial Tribunals/Labour Courts shall scrutinize the evidence carefully and meticulously as an “Appellate Authority/Court”, as they are duty bound to carry out the said exercise, in view of Section 11-A of the Industrial Dispute



Act, 1947.

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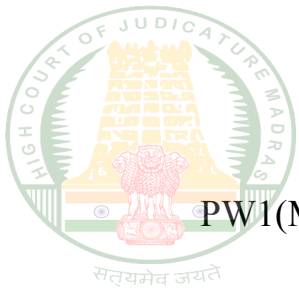
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16. Apart from the above submissions, the learned counsel appearing for the workman/appellant drew the attention of this Court to the following:

(i) Exhibit Ex.P.10 in which the letter sent by the Branch Manager, State Bank of India, Adyar dated 20.07.2004 to the Deputy Manager, State Bank of India of Zonal Office, Chennai. The relevant paragraph is extracted hereunder:

In the evening of 19.07.2004, three persons from SBI Ambedkar Union came viz., Mr.Gunasekar, Mr.Masilamani and another. They told that no permission is necessary for hanging the photo and I responded that when Mr.Gowrishankar orally stated that he proposes to hang a photograph, I had already mentioned that it needs to be discussed and not in haste and abruptly the conversation had ended. In the circumstances, hanging the photo by surprise using outsiders to hit nails in the hall is not acceptable to the Bank. They replied that in 11 branches they have displayed the photo, including Chennai Main branch and nowhere any letter has been issued. They stated that they want to smoothly sort out of the matter and had come for benediction of the photo and to garland it. They asked no permission to do it and I had, in the above circumstances, permitted the same.

(ii) Enquiry proceedings between Presiding Officer and



PW1(Mr.Chandran S/o M.Mahadevan)

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P.O to PW1 : Do you want to say anything in this regard?

PW1 to P.O : A bank employee (service branch, chennai) called Jayakumar brought the photo into the branch by the back door after 3:00 pm. I had duty in the ground floor. So, I did not see the photo when it was hung. After 3:30 pm only I saw it.

P.O to PW1 : You said that Mr.Jayakumar brought a photo through the bank's back door at 3:00 pm. Did anyone else come along with him at that time? Please recall and say.

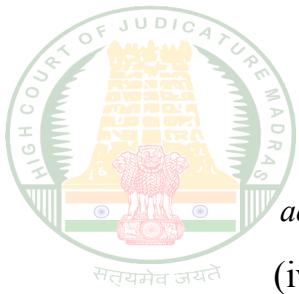
PW1 to P.O : Two others came along with Jayakumar

E.O to PW1 : Would you like to say anything further?

PW1 to E.O : The two people who came along with Jayakumar when he brought the Photo were brought in by Mr.Gowrishankar. I stopped the people who brought the photo at the gate. Mr.Gowrishankar brought them from inside.

(iii) letter dated 08.09.2006 sent by Under Secretary to Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division, Government of India to Chairman, State Bank of India, Head Office, Mumbai. The content of the letter is extracted hereunder:

A reference has been received from the national Commission for Scheduled Castes wherein it has been demanded that the portrait of Dr.B.R.Ambedkar amy be displayed in the premises of all Administrative Offices including Head Office in all Banks/Financial Institutions as per Central Government guidelines issued in the year 1001, during the birth centenary year. Public Sector Banks/Financial Institutions are, therefore, requested to kindly note the instructions for appropriate



action please.

(iv) Tribunal award in I.D.No.90 of 2006 dated 30.04.2012 (para 18,22,23,24,26,27 &28 of the award) are extracted hereunder:

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18. The Question as to whether or not the charges have been proved is to be examined. Regarding Charge No.1 that is leaving of bank premises at 02:00 PM without permission and returning only at about 03:00 PM, from the evidence of PW1 and PW2 it could be found proved that the workman brought the outsiders to the branch on 15.07.2004 and that he was not inside the branch just before 03:00 PM. Direct evidence though lacking from circumstantial factors centering around the incident and spoken to by the witnesses it could be found to be so. Any material logically probative to a prudent mind which is reliable and credible can lead to such a conclusion. Regarding Charge No.2, that is shouting and making false statements to the Security Guards, etc. there is the version of PW2 which is furnishing sufficient material. That portrait was hung is virtually admitted by petitioner. That the AGM had granted permission cannot be accepted because in that case he would not have proceeded against the Security Guard calling for explanation regarding Charge No.3 that the workman arranged hitting of nails and caused damage to the bank's property is proved from the evidence though the extent of damage is not specified. Regarding Charge No.4, that is hanging of portrait of Bharat Ratna Dr.Babasaheb Ambedkar without permission, the same evidence of PW1 and PW2 amply support the charge to have been true apart from the virtual admission of petitioner.



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Regarding Charge No.5, that the workman having arranged to send 25 persons to the bank premises on 19.07.2004 whereof 2 persons alone have been permitted and they did threaten the AGM, is supported by the evidence of PW5 and PW7 where the link and causation for such persons to meet the AGM and have a talk with him about the action taken against the workman from being the workman alone cannot be lost sight of the for the fact that the said act is not, and cannot be occasioned without the nexus and instigation from the part of the workman who is a member of SEWA whose grievance was then sought to be redressed. In order to appreciate the evidence, it is pertinent to note that in any testimony given by a witness there would normally occur marginal or discrepancies, or missions or in the case of a number of witnesses interse their versions which have to be ignored. In other words, in the appreciation of evidence, allowances have to be given to marginal discrepancies of omissions in their evidence which is trite in law. It is also possible to rely on statutory presumptions available under the Indian Evidence Act. Regard having had to the normal human conduct it is also only to be expected from the workman to have had recourse to such a method of arranging by instigating the collected union persons to approach the AGM to ventilate his grievances. So viewed also, the workman cannot be totally a stranger to the action. Regarding Charge No.6 that is spoiling the image of the bank by spreading wrong information etc. and distorting the truth, it is explained by the Circle CGM in his letter dated 27.07.2004 addressed to SEWA that it is unintentional and not meant as disrespectful. The objection was



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to the act of hitting nails causing damage in a place not intended for the purpose. Defence witnesses have not alleged any such disrespectful comments couched by the AGM. The workman is proved to have distorted truth to the dismay of the Management as to whether the workman instigated in the pasting of posters it could well be presumed that he did it because for every action on behalf of the workman thwarted by the Union, his instigation is there which is lawful to presume. Lawful presumptions duly drawn can be based for discussing preponderance of probability. On a preponderance of probability also Charge No.6 could be found proved. Charge No.7 is not held proved by the Appellate Authority. Regarding Charge No.8, that is early heaving of the office without permission of the bank, there is early leaving of the office without permission of the bank, there is PEX.24 letter issued by PW6 to the effect that the workman used to leave the branch around 0130-2000 PM daily and not coming back after lunch, which he did not choose to correct in spite of being pointed out. That being the case a disciplinary Register emerging formation and being maintained because of the cannot be ruled out and there is nothing unusual in it. Thus Charge No.8 is also only to be held as proved. Regarding Charge No.9, that is making of alterations in the Attendance Register by overwriting, on this aspect the version of the witnesses viz., PW4, PW6 and PW6 of the management are only to be believed. The misconduct is only to be held as proved. There is no substance in the arguments of the petitioner. The complaint regarding the alleged irregularities discernibly is not against Sri Arun, AGM but was against another AGM. Giving no reply tot



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he complaint denying the irregularities cannot be found materials enough to hold that the action against the petitioner is mala fide. Charge No.10 & 11 have not been held proved by the Enquiry Officer.

22. While I am to hold on the materials before me that the manner of enquiry and the finding in the enquiry are valid and legal, what is further germane for consideration is whether the punishment imposed on the petitioner has been disproportionate inviting interference by this Tribunal under Section-11A of the Industrial Disputes Act.

*23. Generally, no Industrial Tribunal shall interfere with the punishment awarded by the Disciplinary Authority unless it is satisfied that the punishment imposed is shockingly disproportionate or that on the proved facts and circumstances of the case, no reasonable man should have imposed such a serious punishment. In this case, the punishment imposed was removal from service. Though, this is attacked as an instance of legal victimization by the petitioner that cannot be sustained for any reason. Here the Management was imposing the punishment of removal for reason, inter-alia, that there has been loss of confidence in the employee. In the decision of the Supreme Court in *Kanhaiyalal Aggarwal and Others Vs. Factory Manager, Gwalior Sugar Co. Ltd.* (2001-II-LLJ-111), the Supreme Court held that “what must be pleaded and proved to invoke the aforesaid principle is that (I) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which result in forfeiting the same; and (iii) to continue him in service would be embarrassing and*



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inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence cannot be subjective based upon the mind of the Management. Objective facts which would lead to the definite inference of apprehension in the mind of the management regarding trust worthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost”.

24. From the above discussion, I reiterate the conclusion that the enquiry held against the petitioner is fair and proper. The finding that the workman is guilty of Charge Nos.1 to 6, Charge No.8 and 9 is just and proper. Therefore the finding is only to be upheld as just and proper and it is so found.

26. Though in the impugned and set aside award it was found that punishment by way of removal from service is only to be kept intact as being only just and fair for reasons mentioned therein, having pondered over again for a quite long time after the remand in sequence of a series of logical transition of thoughts and for better reasons being discussed infra, gaining strength and clothed with authority from the decisions referred to above and from the directions of the Hon'ble High Court of Madras in the remand order I am of the considered view that on the further refined approach regarding imposition of punishment upon the delinquent for proved misconducts, gathered from the impeccable glimpses and perceptions contained in the decisions of the Apex Court and other High Courts cited supra I feel emboldened and justified in steering clear of my thoughts in the



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direction why the petitioner shall not be given a lesser punishment than what was imposed on him by way of removal from service which is nothing short of capital punishment putting him in economic death am fortified in being led to such a stand because of the magnanimous approach adopted by the Supreme Court in its decisions cited supra (1980-1-LLJ-137) wherein it has emphasized "but from the jural resolution of labour disputes must be sought in the lawlife complex beyond the factual blinkers of desired cases, beneath the lexical littleness or statutory texts, in the economic basis of industrial justice which must enliven consciousness of the Court and corpus juris", the decision of the Hon'ble High Court of Andhra Pradesh (1981-LAB-IC-651) wherein it is emphasized that "in our case the management cannot award to its employees the extreme penalty of dismissal without reference to the gravity and nature of the misconduct and the circumstances under which the misconduct was found to have been committed and without examining the desirability and the appropriateness of offering a chance to the workman to repent his past and reopen a new life" and also the decision of the Hon'ble High Court of Madras (2006-1-MLJ48) emphasizing that "the main object and thrust behind awarding a punishment to an offender is only to mend him and not to strangulate. Otherwise the very purpose of awarding punishment would not be served".

27. On an enlightened and more refined perceptions on the matter of punishment, taking a departure from the punishment earlier, imposed by me in the impugned and set aside award, clothed with power and gaining strength from the directions in



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the remand order and decisions brought to my notice as discussed above I feel that the petitioner deserves to be given a modified lesser punishment than the termination from service by way of dismissal modified to removal with superannuation benefits. The punishment order of the management is seen to be detaching the workman from the disqualification of eligibility for future employment. Though the management has a case that it has lost confidence in him and he is being severed from service, the said fact is actually not substantiated by the bank though pleaded, but which is lacking in details. The said aspect also shall stand actually proved by the Management but not so done. The ground "loss of confidence" for termination from service requires to be cogently proved. The said aspect now falling for consideration is to be examined on wider views in the context of the decisions relied on by the petitioner and discussed by me supra. As argued by the learned counsel for the petitioner the workman is not charged of a heinous misconduct He is only to be given a further chance by reinstating and repent his past thereby enabling him to be a righteous person. The punishments are generally meant to mend the persons and not to strangle them. Herein by the impugned punishment the workman has been put to economic death. It is well to remember that no man is born criminal, But only circumstances may make him culpable. When one is inherently or intrinsically with some inborn traits of characters of blameworthy nature, regard having had to that such persons if proved to have committed a misconduct, unless given some chance to correct himself and repent for the past a capital punishment, if imposed will be total



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miscarriage of justice which is not the purpose of law and justice. Idiosyncrasies could be read in men varying from person to person and different persons react differently in a particular situation or incident. The conduct of the workman amounting to misconduct towards the superiors and the related acts moving with or motivating the Association causing irritation and nuisance to the conducive atmosphere and working of the bank, while has to be strongly deprecated, yet he is to be visited with the sanction of law by a lesser punishment than the one imposed on him, so as to give him an opportunity of mending himself by pocketing the sufferings already undergone by being deprived of his employment for quite a long time. Let his clamour for a reinstatement be approved by the management with magnanimous approach with fond hope of he being corrected to serve himself and the institution thereafter. The punishment on an overall reconsideration and review, discernibly falls under the category of a punishment disproportionate to the gravity of the misconduct.

28. In the circumstances I hold that by setting aside the punishment of removal from service, the petitioner be reinstated into service forthwith without back wages but with continuity of service and all other attendant benefits. Let the forfeiture of the back wages be the punishment for misconduct proved committed by him. Apart from that if once he is reinstated, thereafter the Management may keep him under observation to ensure that he is punctual in his duty and maintains discipline, peace and good behavior in the bank and premises and that he mends himself as a true and loyal employee to the satisfaction of the Management. If, in the wake of his removal from



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service the superannuation benefits have already been disbursed to him, the same shall be appropriately adjusted after his reinstatement into service.

17. The learned counsel for the respondent/Bank vehemently contended that the Bank took action against the workman/appellant not for putting up the portrait of Dr.B.R.Ambedkar, but for putting up the portrait without permission and thereafter committing various misconducts. The learned counsel further submitted that in the Charge Sheet, wherein, eleven charges were made, the Enquiry Officer held that the charge Nos.1 to 6, 8 & 9 were held to be proved and charge No.7 was partly proved and based on the findings of the Enquiry Officer, the Disciplinary Authority dismissed the workman/appellant from service. The Appellate Authority, besides holding that the charge No.7 was also not proved, modified the punishment of dismissal into one of removal from service.

18. The Central Government Industrial Tribunal concurred with the findings of the Enquiry Officer, Disciplinary Authority and Appellate Authority of the Bank, on the charges, while dismissing ID No.90 of 2006 on 15.05.2009 and again, on remand, the Central Government Industrial

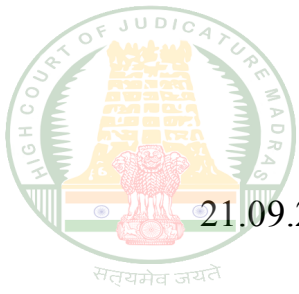


Tribunal recorded the same findings on the charges, in the Award dated 30.04.2012 in ID No. 90 of 2006. The learned Single Judge also concurred with those findings. Thus, according to him, these Authorities held that the charges were proved and this Court at the appellate stage, cannot upset those findings.

19. The learned counsel for the respondent/Bank further submitted that the reinstatement ordered by the Central Government Industrial Tribunal was solely on sympathetic consideration and the same is deprecated by the Apex Court in various judgments.

20. The learned counsel for the respondent/bank further submitted that except the portrait of Mahatma Gandhi, Father of the Nation, no photographs are hung up in the Bank's premises and therefore, if anybody wants to put up other portraits, there should be proper permission. The Bank normally would not permit putting up of the portrait of other leaders. Otherwise, it will lead to so many demands from various sections of the employees.

21. The eleven charges mentioned in the Charge Sheet dated



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21.09.2004 are extracted hereunder:

i) *"On 15.07.2004, you had left the Bank premises at 02.00 PM without obtaining prior permission from the Manager (Accounts) under whose control you were working and you returned back to the branch only at about 03.00 PM along with an outsider.*

ii) *When you returned to the Bank's premises along with an outsider, Shri S.Maheswaran and Shri.M.Chandran, Bank's Armed Guards, resisted the entry of the outsider into the premises on security reasons, you shouted at them and you had questioned the authority of the Armed Guards and thus prevented them from performing their duty. You had also made a False statement to the Armed Guards that you had obtained prior permission from the Assistant General Manager of the Branch and managed the entry of the outsider into the premises.*

iii) *You had, with the help of the outsider, arranged hitting of nail on the wall panels at the entrance of the Banking Hall in the Ground Floor, thereby wilfully caused damage to the Bank's property.*

iv) *You had hung a portrait of Bharat Ratna Dr.Babasaheb Ambedkar without, obtaining prior permission and when the Armed Guards tried to resist the hanging of the portrait, you had made a false statement to them that you had already obtained the prior permission of the Asst. General Manager of the branch.*



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v) *When a memo dated 16.07.2004 calling for explanation was issued by the Chief Manager to you on the above acts of yours, you had arranged for sending about 25 persons to the Bank's premises on 19.07.2004 around 03.00 PM. Apprehending the trouble within the premises, two persons in the group namely, Shri Kumari Arun and another were allowed by Shri K.L.Easwar, Officer, Adyar Branch to meet the Asst. General Manager of the Branch. The aforesaid two persons threatened the Asst. General Manager that. "if you are acting at the behest of the higher official, name then, whether in Mumbai, Delhi, Calcutta, Bangalore or Chennai, we will ensure that they do not go back home". While leaving, they further stated that at no place they had left simply talking to the persons without resorting to action. Thus you brought pressure from outsiders to threaten the Asst. General Manager of the branch who was also the Disciplinary Authority, to prevent taking action against you.*

vi) *You had instigated the SC/ST Employees Welfare Association and arranged for pasting (Tamil) posters, placing Tamil placards at Adyar Branch, Chennai Main Branch, Zonal office at Chennai, Tiruchirapalli, Coimbatore and Madurai, Local Head office and many other branches in Chennai and in other places demanding*

*"Government of Tamil Nadu
Arrest DGM of SBI, Chennai Module, Mr.Chanti Babu and
AGM, Adyar Branch Mr.Arun under SC/ST Oppression
Prevention Act for having insulted our National Leader by
stating that :*

*SBI, Adyar Branch's ambiance has been spoiled by display of
Dr.Ambedkar's photo.*



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... SB SC/ST Employees

Welfare Association

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You have thus spoiled the image of the Bank by spreading the wrong information and distorting the truth.

vii) On 02.08.2004, during the office hours, you had in your possession a bunch of pamphlets (in Tamil) demanding the arrest of Deputy General Manager of Zonal Office, Chennai and Assistant General Manager of the branch as issued by Shri.A.K.Gopaldasamy and shown the same to the employees of the branch.

*viii) You had left the branch premises earlier than your regular working hours without prior permission on various occasions, particularly on the following days : 04.08.2004 05.08.2004
06.08.2004*

*12.08.2004 13.08.2004 17.08.2004
18.08.2004 20.08.2004 23.08.2004
25.08.2004 26.08.2004 30.08.2004*

x) The Manager (Accounts) of the branch marked your leaving the branch earlier than regular hours, without obtaining permission, but you had made alterations in the Bank's Attendance Register by overwriting the official's notings and made false entries, thus tampering official records. A few such false entries made by you on the attendance Register on specific dates are furnished below :



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04.08.2004 05.08.2004 06.08.2004
12.08.2004 19.08.2004 20.08.2004
23.08.2004 25.08.2004 26.08.2004
27.08.2004

x) You have often entered the cabin of Shri Jayaprakash, Manager (Accounts) during the business hours and threatened him about his actions about the marking of Attendance Register regarding your early departure from the office hours.

xi) You have also arranged threatening phone calls from Shri Gunasekaran, Shri Masilamani and Shri Arasakumar, office bearers of SBI SC/ST Employees' Welfare Associations, to Shri Jayaprakash, Manager (Accounts), threatening him with dire consequences for having marked Attendance Register about your leaving branch before closing hours, which caused mental agony, stress to the above official affecting his health and performance of his duties."

22. The learned counsel for the respondent /Bank further drew the attention of this Court to the following:

(i) Charge No.5 which is mentioned in the Memo dated 21.09.2004 is extracted hereunder:-

(V) When a memo dated 16.07.2004 calling for explanation was issued by the Chief Manager to you on the



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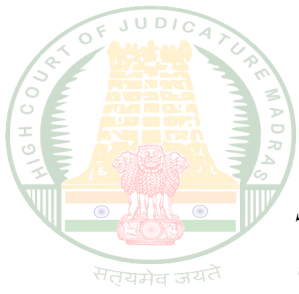
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above acts of yours, you had arranged for sending about 25 persons to the Bank's premises on 19.07.2004 around 03.00 PM. Apprehending the trouble within the premises, two persons in the group namely, Shri Kumari Arun and another were allowed by Shri K.L. Easwar, Officer, Adyar Branch to moot the Asst. General Manager of the Branch. The aforesaid two persons threatened the Asst. General Manager that "if you are acting at the behest of the higher official, name them, whether in Mumbai, Delhi, Calcutta, Bangalore or Chennai, we will ensure that they do not go back home". While leaving, they further stated that at no place they had left simply talking to the persons without resorting to actions. Thus you brought pressure from outsiders to threaten the Asst. General Manager of the branch who was also the Disciplinary Authority, to prevent taking action against you.

(ii) The order of dismissal dated 02.12.2005 sent by the Assistant General Manager, State Bank of India, Mylapore Branch to the Appellant.

(iii) The order of the Appellate Authority dated 03.04.2006. The relevant portion is extracted hereunder:

However, I also observe that the employee hails from a downtrodden family and has to support a family of wife and two female children. Besides, he has stated that he has no other sources of income to support his family. Inasmuch as he has put in 19 years of service, he will not be eligible for pension. I have, therefore, as a special case, decided to take a lenient view purely on humanitarian grounds and modify the punishment to one of "REMOVAL FROM SERVICE WITH



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SUPERANNUATION BENEFITS AS WOULD BE DUE OTHERWISE UNDER THE RULES OR REGULATIONS PREVAILING AT THIS TIME AND WITHOUT DISQUALIFICATION FROM FUTURE EMPLOYMENT" as per Clause 6(b) of Memorandum of Settlement dated 10.04.2002 and order accordingly.

(iv) To prove the conduct of the appellant/workman in the earlier charge Memo dated 07.02.1998, in which Charge No.2 shows the bad conduct of the appellant and the same is extracted hereunder:-

“CHARGE NO:(II)

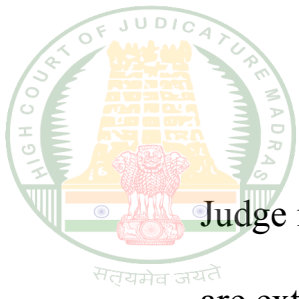
After uttering the words at her, you went to the toilet at the branch, came out with a bucket and rusted to Ms.Subbathira with an intention to pour the contents of the bucket on her, in the process you shouted at her”.

(v) Letter dated 14.08.1987 by the Chief General Manager, State Bank of India, Madras-2 to the State Bank Branch of Avalyurpet and Tiruvaiyar.

(vi) Letter dated 08.09.2006 sent by Ministry of Finance, Department of Economic Affairs, Banking Division, Government of India to Chairman, State Bank of India, Head Office, Mumbai.

(vii) Guidelines dated 13.04.2007 issued by the respondent/bank based on the instructions given by the Ministry of Finance, Government of India.

(viii) The common order dated 17.10.2014 passed by the learned Single



Judge in W.P.Nos.24952 of 2012 and 2529 of 2013. The relevant paragraphs are extracted hereunder:-

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6. *The learned senior counsel appearing for the Management further submitted that only if the findings of the Appellate Authority are perverse or the Management is guilty of victimisation, unfair labour practice or mala fide, then only the Tribunal can make an interfere with the punishment imposed on the Workman. But, in the instant case, the Tribunal has interfered with the punishment imposed by the Appellant Authority, only on finding that the workman should be given further chance to correct himself to repent his past, thereby enabling him to be a righteous persons; the said findings cannot be a basis to invoke section 11A of the Industrial Disputes Act to quash the order of termination of service passed by the Appellate Authority.*

7. *The learned senior counsel appearing for the Management has further submitted that only when the Tribunal feels that the punishment imposed on the delinquent officer in shockingly disproportionate to the charges levelled against him, by recording the reasons it can make an interference with the punishment imposed by the Management; but, that is not the state of affairs in the instant case; only purely on sympathetic consideration, the Tribunal has interfered with the punishment imposed on the Workman by the Appellate Authority; therefore, the same is not legally sustainable.*



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8. *It is further submitted by the learned senior counsel appearing for the Management that in various judgments the Hon'ble Supreme Court has held that the displaced sympathy, generosity and private benevolence cannot be a ground to interfere with the punishment awarded by the disciplinary authority. In support of his contentions, the learned senior counsel appearing for the Management has relied upon the following judgments:*

- 1) 1973 (1) GCC B13 (workman Vs. Firestone Tyre and Rubber Co.)
- 2) 2006 (13) SCC 619 (Kerala Sovent Extractions Ltd. Vs. A. Unnikrishnan)
- 3) 1996 (6) SCC 590 (New Shorrock Mills Vs. Maheshbhai T.Rao)
- 4) 2000 (3) SCC 324 (U.P. State Road Transport Corpn Vs. Subhash Chandra Sharma)
- 5) 2003 (4) SCC 364 (Chairman Managing Director, United Commercial Bank Vs. P.C.Kakkar)
- 6) 2005 (10) SCC 84 (Damoh Panna Sagar Rural, regional bank, Munna Lal Jain)

9. *Per contra, the learned counsel appearing for the workman in reply submitted that the Tribunal without properly appreciating the material documents produced by the workman in the enquiry, has passed the impugned order withholding the backwages as punishment to the Workman. In this regard, the learned counsel appearing for the Workman further submitted that the workman, as a member of the suppressed class, with a bona fide thought, installed the photo of Dr.Ambedkar, one of*



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the framers of the constitution, in the Adyar Branch office of SBI, only on the oral permission given by the Assistant General Manager of the Bank; but, in order to victimize the Workman, for no fault on his part, the Management served a memo upon him and started to harass him; the charge-memo was issued as against the Workman mainly on the allegation that the Workman brought the outsiders into the bank premises and hit a nail on the wall of the Bank and hanged a photo of Dr. Ambedkar, without the permission of the superior officers; but, this allegation was split into eleven charges, only with an intention to victimize him.

12. By way of reply, the learned senior counsel appearing for the Management has submitted that the Chief General Manager of the Bank issued a circular granting permission only to put up photo of Mahatma Gandhi, father of the nation, so far as the display of various national leaders are concerned, the Bank does not grant express permission for the same, as the bank has to ensure that the disrespect should not be shown to the pictures of the national leaders.

18. After remand, the Tribunal after re-appreciating the evidence has passed the impugned award dated 30.04.2012 holding that the enquiry conducted by the enquiry officer was just and proper; however, on a sympathetic consideration, the Tribunal has made an interference with the punishment imposed on the workman, by directing the Management to reinstatement of the workman into the service with continuation of service, but without backwages.



(ix) The learned counsel for the respondent/Bank further relied on the following judgments:

- 1) *Union of India and Others Vs. Narain Singh* (2002) 5 SCC 11.
- 2) *Regional Manager U.P SRTC Etawah and others Vs. Hotilal and Another* (2003) 3 SCC 605
- 3) *Bharat Forge Co. Ltd., Vs. Uttam Manohar Nakate* (2005) 2 SCC 489
- 4) *M.P. Electricity Board Vs. Jagdish Chandra Sharma* (2005) 3 SCC 401
- 5) *Muriadih Colliery of Bharat Coking Vs. Bihar Colliery kamgar Union* (2005) 3 SCC 331
- 6) *Mahindra and Mahindra Ltd Vs. N.B.Narawade* (2205) 3 SCC 736
- 7) *L.K.Verma Vs. HMT Ltd and Another* (2006) 2 SCC 269
- 8) *Hombe Gowda Educational Trust and Another Vs. State of karnataka and Others* (2006) 1 SCC 430
- 9) *Indian Drugs & pharmaceuticals Ltd Vs. Workmen, Indian Drugs & pharmaceuticals Ltd* (2007) 1 SCC 408
- 10) *Usha Brecco Mazdoor Sangh Vs. Management of Usha Brecco Limited and Another* (2008) 5 SCC 554
- 11) *Virudhachalam Co-op. Urban Bank ltd. Vs. Labour Court,*



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Cuddalore and another (1995) 2 LLJ 173

12) *Sayed Azam (y.) Vs. State of Madras by Secretary, Education and Public Health Department (1963) 1 LLJ 512*

23. On perusal of the materials available on record, it is pertinent to mention one of the important submissions made by the learned counsel appearing for the respondent/bank which is extracted hereunder:-

“that except the portrait of Mahatma Gandhi, Father of the Nation, no photographs are hung up in the Bank's premises and therefore, if anybody wants to put up other portraits, there should be a proper permission. The Bank normally would not permit to put up the portrait of other leaders. Otherwise, it would lead to so many demands from various sections of the employees”.

and the evidence adduced by the workman/appellant during the enquiry:

On the other hand, the workman, who examined himself as D.W.5, has categorically deposed that he obtained oral permission. It is useful to extract the following passage in the chief examination of D.W.5 (English translated version, which was provided by the Bank to the CGIT):

DR to DW5: An enquiry is being conducted on you regarding hanging of a portrait of Dr.Ambedkar in Adyar Branch. When you were handing the portrait of Dr.Ambedkar what did you tell the Armed Guards Mr.S.Maheswaran and Mr.M.Chandran regarding permission for hanging the picture?



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DW5 to DR: I told them that I had already obtained permission for hanging the portrait from the AGM two days back.

DR to DW5: An enquiry is being conducted on you regarding hanging of a portrait of Dr.Ambedkar in Adyar Branch. When you were handing the portrait of Dr.Ambedkar what did you tell the Armed Guards Mr.S.Maheswaran and Mr.M.Chandran regarding permission for hanging the picture?

DR to DW5: Please say whether you had actually obtained permission.

DW5 to DR: Two days before, at around 3:00 PM, I went to the AGM Mr.Arun and told him, "Sir, I am going to hand the portrait of Dr.Ambedkar." For this he replied "consider and do."

DR to DW5: After this, did you request the AGM again regarding permission? What did the AGM say for it?

DW5 to DR: I obtained oral permission from the AGM.

DR to DW5: Please tell about whether you had brought any outsiders to help hang that portrait.

DW5 to DR: I did not bring in any outsiders

DR to DW5: How was the nail fixed for hanging the portrait of Dr.Ambedkar?

DW5 to DR: I did not fix the nail. The nail was already fixed.

The workman was cross-examined in the enquiry by the Presenting Officer on this aspect. The workman stuck to his stand. It is relevant to extract the following question put to D.W.5 by the presenting Officer and the answer given by D.W.5 during enquiry proceedings:

P.O to DW5: When AGM Mr.Arun testified, he has stated that



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when you asked for permission to hang the portrait of Dr.Ambedkar, he told you that as it was an important issue, it may be discussed later. Whereas in you testimony, you have mentioned him as saying “consider and do.” If it is said that you have taken what the AGM told you as permission, will it be right or wrong?

DW3 to DR: As far as Trichy Zone is concerned, pictures of deities like Vinayaka, Murugan, Lakshmi, Saraswati etc. are hung in all the branches. Moreover, pujas are performed for them on days like Fridays, Tuesdays etc. The statue of nataraja is kept at the entrance of the Trichy Zonal office. Next., a small statue of Tirupathi Venkatachalapathi is kept in the room (room No.1) of Region-I AGM, in the first floor. In the room (room No.119) of Region0I AOG, the picture of Pillayarpathi Vinayagar is hung....”

The other limb of the charge is that the workman made false statement to the Armed Guards that he obtained permission from the Assistant General Manager. The issue as to the obtaining of prior of permission was dealt with in detail hereinabove.

Further, as per the evidence of P.W.1, one Jayakumar, as employee from the service branch of the respondent Bank, brought the portrait of Dr.ambedkar and along with Thiru.Jeyakumar two outsiders came. But nowhere in his evidence P.W.1 stated that the appellant/workman went outside the Branch in working hours between 2 to 3 and brought the portrait and outsiders. In fact, the Enquiry Officer held, while dealing with charge No.1, that no direct evidence was let-in to



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show that the workman left the Branch at 2.00 p.m.

The submission of the learned counsel for the appellant that even the absence without leave or overstaying sanctioned leave without sufficient grounds is termed only as a minor misconduct under the conditions of service of the Bank as per the Settlement dated 10.04.2002. The same is enclosed in the typed-set of papers. The relevant portion of Clause 7 of the settlement reads as follows:

7. By the expression minor conduct shall be meant any of the following acts and omissions on the part of an employee :

(a) absence without leave or overstaying sanctioned leave without sufficient grounds;

(b) unpunctual or irregular attendance ;

The punishment for the minor misconduct is prescribed in Clause 8 of the Settlement and Clause 8 reads as follows:

“8. An employee found guilty of minor misconduct may:

(a) be warned or censured ; or

(b) have an adverse remark entered against him; or

(c) have his increment stopped for a period not longer than six months.”

5. By the expression “gross misconduct” shall be meant any of the following acts and omissions on the part of an employee:

.....

(f) habitual doing of any act which amounts to “minor misconduct” as defined below “habitual” meaning a course of action taken or persisted in, notwithstanding that at least on three previous occasions censure or warnings have been



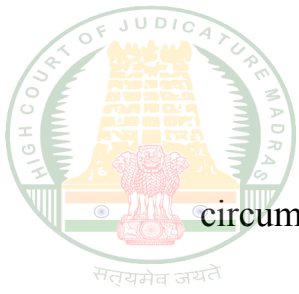
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administered or an adverse remark has been entered against him:

WEB COPY 24. Out of the 11 charges framed in the Charge Memo dated 16.07.2004, the Charge Nos.1 to 6, 8 & 9 were proved. Even according to the Bank, the workman sought permission to put up the portrait of Dr.B.R.Ambedkar and the workman/appellant was told that the matter could be discussed later. Furthermore, even in the letter dated 20.07.2004, which was marked as Ex.P.10 before the enquiry, it is stated by P.W.5 that the workman/appellant sought permission orally and he told him that the same had to be discussed. Paragraph (v) of the letter dated 20.07.2004 of P.W.5, Ex.P.10 is extracted hereunder:-

“(v) In the evening of 19.07.2004, three persons from SBI Ambedkar Union came viz., Mr.Gunasekar, Mr.Masilamani and another. They told that no permission is necessary for hanging the photo and I responded that when Mr.Gowrishankar orally stated that he proposes to hang a photograph, I had already mentioned that it needs to be discussed and not in haste and abruptly the conversation had ended.”

25. The above vital piece of evidence was not considered or discussed by the Central Government Industrial Tribunal. Therefore, it could not be concluded that there was no permission obtained from the bank in the said



circumstances.

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26. The Department of Economic Affairs (Banking Division), Ministry of Finance, Government of India, issued a circular in F.No.5/7/2006-SCT(B) dated 08.09.2006, to the Chairman of State Bank India, besides other heads of nationalized Banks and other financial institutions directing to display the portrait of Dr.B.R.Ambedkar in all the offices of the Banks/financial institutions. The said circular is also enclosed in the typed set of papers and the same is not disputed by the learned counsel for the respondent/Bank. For better appreciation, the circular of the Government of India dated 08.09.2006 is extracted hereunder:

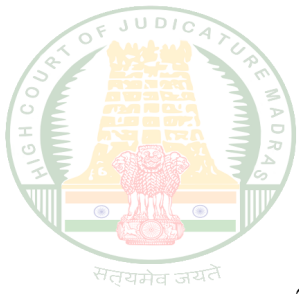
“ A reference has been received from the National Commission for Scheduled Castes wherein it has been demanded that the portrait of Dr.B.R.Ambedkar may be displayed in the premises of all Administrative Offices including Head Office in all Banks/Financial Institutions as per Central Government guidelines issued in the year 1991, during the birth centenary year. Public Sector Banks/Financial Institutions are therefore requested to kindly note the instructions for appropriate action please.”

27. One Mr.Jayakumar, who is an employee from the Service Branch of the Bank, brought the portrait of Dr.B.R.Ambedkar to Adyar Branch, but no



action was taken against him. After hanging the portrait of Dr.B.R.Ambedkar on 15.07.2004, a Memo dated 16.07.2004 was served on the appellant/workman by the Bank, wherein, it has been stated that the ambiance of the hall has been spoiled by putting up the portrait of Dr.B.R.Ambedkar. Immediately, the workman/appellant responded in his letter dated 21.07.2004 stating that the wordings found in the memo that the ambiance of the hall has been spoiled by putting up of the portrait of Dr.B.R.Ambedkar, hurt the feelings of crores of Schedule Caste people and also stated that Dr.B.R.Ambedkar is the God for the Scheduled Caste people and that Dr.B.R.Ambedkar was awarded Bharat Ratna award by the Government of India.

28. The Chief General Manager, in his reply letter dated 27.07.2004 to the General Secretary of the SC/ST Association, stated that the remarks in the memo dated 16.07.2004 that the ambiance of the hall has been spoiled is unintentional. Moreover, there is no evidence that those two persons who came to the Bank and held discussions with the Assistant General Manager and the visit of 25 persons on 19.07.2004 were arranged by the appellant/workman.



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29. Furthermore, 25 persons allegedly came to Adyar Branch of the respondent Bank on 19.07.2004 after the business hours. Hence, the Armed Guards are the relevant witnesses to speak about the incident. But, no Armed Guard complained about the visit of a large number of people after the business hours of the Bank.

30. In fact, the Chief General Manager in his letter dated 27.07.2004, which was marked as Ex.P.8, reiterated that the portrait of Mahatman Gandhi, the Father of the Nation alone is displayed in the Banking Halls/public spaces and this cannot be taken in a lighter view for the reason, when there is sufficient evidence to show that the portrait of Dr.B.R.Ambedkar was put up in various Branches of the Bank as borne out in the evidence and subsequently, the Government of India, Ministry of Finance, issued a circular dated 08.09.2006 directing the Bank to display the portrait of Dr.B.R.Ambedkar in the offices of the Bank. In view of the circular issued by the Government of India, the Bank could have reversed its decision of removing the appellant/workman from service and could have given some other punishment.



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31. The Enquiry Officer has also held that by applying the principle of preponderance of probability, came to the conclusion that the workman/appellant instigated the association and no evidence was adduced in this regard. The Central Government Industrial Tribunal, while exercising its power under Section 11A of the Industrial Dispute Act, should have seen whether there is any regular and acceptable reason available against the workman/appellant. In any event, after analysing the evidence on record, we are of the view that deprivation of backwages from 2004, till the passing of the Award dated 30.04.2012 itself for a period of eight years would be more than sufficient punishment in this case. Though the appellant/workman has rendered 19 years and 6 months of service and though the punishment order stated that his removal was with superannuation benefits, he is not entitled for the same, since, he has not completed 20 years of service as on the date of removal from service.

32. In our view, the Central Government Industrial Tribunal recorded a categorical finding that the workman/appellant did not face the charge of



heinous misconduct and only based on such findings, the Central Government

Industrial Tribunal interfered with the punishment of removal and the categorical finding is made in paragraph 27 of the Award dated 30.04.2012.

It is useful to reproduce paragraph 27 in this regard :

27. On a enlightened and more refined perceptions on the matter of punishment, taking a departure from the punishment earlier imposed by me in the impugned and set aside award, clothed with power and gaining strength from the directions in the remand order and decisions brought to my notice as discussed above I feel that the petitioner deserves to be given a modified lesser punishment than the termination from service by way of dismissal modified to removal with superannuation benefits. The punishment order of the management is seen to be detaching the workman from the disqualification of eligibility for future employment. Though the management has a case that it has lost confidence in him and he is being severed from service, the said fact is actually not substantiated by the bank though pleaded, but which is lacking in details. The said aspect also shall stand actually proved by the Management but not so done. The ground "loss of confidence" for termination from service requires to be cogently proved. The said aspect now falling for consideration is to be examined or wider views in the context of the decisions relied on by the petitioner and discussed by me supra. As argued by the learned counsel for the petitioner the workman is not charged of a heinous misconduct. He is only to be given a further chance by reinstating and repent his past thereby enabling him to be a righteous person. The punishments are generally meant



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to mend the persons and not to strangulate them. Herein by the impugned punishment the workman has been put to economic death. It is well to remember that no man is born criminal. But only circumstances may make him culpable. When one is inherently or intrinsically with some inborn traits of characters of blameworthy nature, regard having had to that such persons if proved to have committed a misconduct, unless given some chance to correct himself and repent for the past a capital punishment, if imposed will be total miscarriage of justice which is not the purpose of law and justice. Idiosyncrasies could be read in men varying from person to person and different persons react differently in a particular situation or incident. The conduct of the workman amounting to misconduct towards the superiors and the related acts moving with or motivating the Association causing irritation and nuisance to the conducive atmosphere and working of the bank, while has to be strongly deprecated, yet he is to be visited with the sanction of law by a lesser punishment than the one imposed on him, so as to give him an opportunity of mending himself by pocketing the sufferings already undergone by being deprived of his employment for quite a long time. Let his clamour for a reinstatement be approved by the management with magnanimous approach with fond hope of the being corrected to serve himself and the institution thereafter. The punishment on a overall reconsideration and review, discernibly falls under the category of a punishment disproportionate to the gravity of the misconduct.

33. The Central Government Industrial Tribunal also rejected the submission of the Bank that they lost confidence on the appellant/workman



by placing reliance on the judgment of the Hon'ble Apex Court in *Kanhaiyalal Agarwal and others V. Factory Manager, Gwalior Sugar Co. Ltd.* (2000-II-LLJ-111) and the Central Government Industrial Tribunal has correctly held that the principle of loss of confidence could be invoked only when the workman holds the position of trust and confidence. Admittedly, in this case the workman/appellant is a last grade servant and there is no allegation of any misappropriation against him. Hence, the question of loss of confidence, as pleaded by the Bank before the Central Government Industrial Tribunal, is not sustainable.

34. Hence, we are of the considered view that the charges levelled against the appellant/workman will amount to a minor misconduct as per clause 7 of the Bank settlement dated 10.04.2002 and warrants the punishment mentioned in clause 8 of the settlement, and he did not face the charges of grave misconduct, which warrants the punishment of removal from service as contended by the respondent/bank.

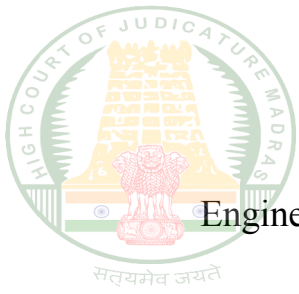
35. The learned Single Judge held that the order passed by the Central Government Industrial Tribunal is based on sympathetic consideration. The



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learned Single Judge relied on the judgment of the Hon'ble Apex Court in Chairman and Managing Director, United Commercial Bank V. P.C.Kakkar, reported in (2003) 4 SCC 364 and Damoh Panna Sagar Rural Regional Bank V. Munna Lal Jain, reported in (2005) 10 SCC 84. In our considered view, these two judgments cannot be applied to the facts of this case, since, these two cases do not arise out of the Industrial Dispute Act and the persons involved in these two cases are the officers of the Bank and not a workman under Section 2(s) of the Industrial Disputes Act, 1947 and they have directly approached the High Court challenging their dismissal order. Section 11 A of the Industrial Dispute Act was not applicable to those persons and further, the allegations are of misappropriation of funds, which is of a very serious nature.

36. In view of the facts and circumstances of the case, we are of the considered view that the Award of the Central Government Industrial Tribunal ordering reinstatement cannot be interfered with, since the Central Government Industrial Tribunal exercised its power under Section 11A of the Industrial Dispute Act, 1947 in interfering with the punishment of removal and the same is in the light of the judgment of the Hon'ble Apex Court in Firestone's case and the judgment of the Division Bench of this Court in



Engine Valvae's case (cited supra).

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37. Moreover, while interfering with the punishment by exercising the power under Section 11A of the Industrial Disputes Act, 1947, the Central Government Industrial Tribunal is bound to give reasons. In our view, the Central Government Industrial Tribunal gave adequate reasons for interfering with the punishment. Hence, we do not find any infirmity in the award.

38. In view of the above facts and circumstances of the case, the order passed by the learned Single Judge in W.P.No.24952 of 2012 is liable to be set aside. Accordingly, the same is set aside. In the result, the W.A.No.116 of 2016 is allowed and the bank is directed to pay all other attendant benefits, but without backwages, as ordered by the Tribunal in the award dated 30.04.2012 in I.D.No.90 of 2006, within a period of three months from the date of receipt of a copy of this judgment.

39. Since the appeal in W.A.No.116 of 2016 is allowed and the appeal in W.A.No.117 of 2016 stands dismissed. There shall be no orders as to costs.



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(M.D.J.) (J.S.N.P.J.,)
25.03.2022

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Index : Yes/No
Speaking Order/Non-Speaking Order
(vm)

To:

1. The Deputy General Manager (SME),
State Bank of India,
Local head Office,
Circle Top House,
No.16, College Lane,
Chennai – 600 005.
2. The Assistant General manager,
State Bank of India,
Mylapore Branch, Chennai – 600 004.
3. The Presiding Officer,
Central Government Industrial
Tribunal – cum - Labour Court,
Chennai.

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M.DURAI SWAMY, J.

and

J.SATHYA NARAYANA PRASAD, J.

(vm)

**Pre-Delivery Common Judgement
in W.A.Nos.116 & 117 of 2016**



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25.03.2022