
(2002) 03 MAD CK 0183

In the Madras High Court

Case No : Writ Petition No. 16187 of 1998 and W.M.P. No. 24485 of 1998

S.Madhavan

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 12-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2002) 03 MAD CK 0183

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : V. Prakash, for the Appellant; Venkataraman, for Aiyar and Dolia, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The above writ petition has been filed by the petitioner praying to issue a writ of Certiorarified Mandamus calling for the records of the third respondent relating to his order bearing No.CZV:DPC:193:97 dated 24.6.1997 and of the second respondent relating to his order dated 22.10.1997 rejecting the appeal of the petitioner, quash the same and direct the first respondent to pay the petitioner his full pay and allowances for the period of his suspension by treating the said period as one on duty and further direct the first respondent to pay the petitioner his full wages for the month of June, 1997 and his retirement dues in full.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the petitioner was the Clerk/Shroff at the Tiruppur Main Branch of the respondent Bank; that he was the Vice-President of the Indian Bank Employees Union till 18.12.1995 but lost in the election conducted subsequently; that in the capacity of the Vice President of the said Union, he had collected certain amounts in cheques from various customers of the Branch as tariff to the Souvenir to be released at the time of 34th Conference of the Indian Bank Employees Union held on 17th and 18th of December, 1995

and since he was defeated in the election, he started another Union by name Indian Bank Employees Union (M.L.).

3. Thereupon, on a complaint lodged by one E.Arunachalam, General Secretary of the Indian Bank Employees Union, Madras alleging that the petitioner after collecting some tariff under the pretext of bringing out a Souvenir to commemorate the occasion of 34th conference of the Indian Bank Employees Union, since he did not get elected, having decided to swindle the said collections had opened an S.B.Account on 18.1.1996 in the style of `S.Madhavan, Organiser, Indian Bank Employees Union (M-L) at Tiruppur Main Branch and encashed eleven cheques drawn in favour of the Indian Bank Employees Union available with him totalling a sum of Rs.14,500/= and closed the SB Account on 9.2.1996, the Assistant General Manager of the Zonal Inspectorate, Bangalore, by his order dated 1.3.1996 had directed one K.S.Gnanasekar, Inspector, Zonal Inspectorate, Bangalore to investigate the above complaint.

4. It further comes to be known that based on the report of the said Inspector of Zonal Inspectorate, dated 15.4.1996 thereby holding that the petitioner had deliberately, with intent to deceive/defraud the true owner of the cheques encashed the cheques worth Rs.14,500/= pertaining to Indian Bank Employees Union with the help of officials of Tiruppur Branch of the respondent Bank, by adding "(M-L)" to the payees original name `Indian Bank Employees Union", the third respondent by his order dated 3.6.1996 had placed the petitioner under suspension and had issued a show-cause notice to the petitioner dated 7.6.1996 calling upon the petitioner to show-cause as to why disciplinary action should not be taken against him and by his reply dated 14.8.1996, the petitioner had denied all the allegations of the show-cause notice further requesting to drop further proceedings in the matter and having found the said explanation of the petitioner not satisfactory, the third respondent by his order dated 8.3.1997 framed the following charges against the petitioner:

"1.While working as Clerk/Shroff of our Tiruppur Branch, you had on 18.1.96 opened a Savings Bank account in the name and style of `S.Madhavan, Organiser, Indian Bank Employees Union (M.L.)/SB Account No.16270" at our Tiruppur Branch, by remitting Rs.100/= in cash.

2. You had collected and retained the following cheques received by you in your capacity as the Vice-President of the Indian Bank Employees" Union till 18.12.95.

Sl.	Cheque	Date	Amount	Drawn on	No.	Number	Rs.
1.	907494	27.10.95	2000	IB, Tiruppur	2.	408797	20.11.95 1000
3.	324006	02.11.95	1000	IB, Tiruppur	4.	315709	31.10.95 1000
5.	313342	09.11.95	1000	IB, Tiruppur	6.	317277	04.12.95 1000
7.	843477	15.12.95	500	IB, Karamadai	8.	1641491	15.12.95 1000
9.	457019	500	Canara Bank, CBE	10.	5000	CUB Ltd., Salem	11. 500
						IB, Naal Road	----- 14500 -----

3. You had managed to get collected the proceeds of the above eleven cheques payable to Indian Bank Employees" Union through the SB Account No.16270 with

Tiruppur Branch standing in the name and style of "S.Madhavan, Organiser, IBEU (ML)" by arranging and/or causing material alteration therein by addition/insertion of the words "M.L." with/in the name of the payee,with an ulterior motive of wrongfully enjoying the proceeds of all the above eleven cheques.

4. You had withdrawn the amount so collected/credited in the SB Account No.16270with Tiruppur Branch by means of various cheques and thus enjoyed the proceeds of the above eleven cheques which were not due to the IBEU-ML. While withdrawing, you had drawn the cheques as `S.Madhavan, Organiser, IBEU (ML) payable to self" and had signed on the reverse in your individual capacity as S.Madhavan, thereby proving the ulterior motive with which the cheques were converted.

5. You had opened the SB Account No.16270 at Tiruppur Branch on 18.1.96. After having wrongfully got credited the proceeds of the above eleven cheques, you had withdrawn their proceeds and also withdrawn Rs.600/= being the balance in the SB Account 16270 on 9.2.96 and closed the account on that day. The short period within which the account was closed goes to indicate that the purpose of opening the account was not to maintain/operate the account in the name and style of `IBEU-ML" (if at all such an organisation existed) but to convert the cheques wrongfully through the account and enjoy the proceeds of those eleven cheques wrongfully,

Your above acts of wrongfully gaining of Rs.14500/= belonging to the Indian Bank Employees" Union, Madras,if proved, will amount to doing any act prejudicial to the interest of the Bank involving or likely to involve the Bank in serious loss and will therefore amount to gross misconduct as per para 19.5 (j) of the Bipartite Settlement dated 19.10.1966"

[The third respondent further mentioned in the said chargesheet that one M.Ramasamy, Senior Manager,Indian Bank, Ram Nagar Branch was appointed the Enquiry Officer.]

5. Then, the Enquiry Officer conducted the enquiry, wherein on behalf of the Management, 11 witnesses were examined for oral evidence as M.Ws.1 to 11, of whom M.Ws. 1 to 7 and 9 are the officials of the Bank, M.W.8 and M.W.11 are the drawers of the cheques in issue and witness No.10 is K.S.Gnanasekar, who had conducted the investigation into the matter on the basis of the complaint of the General Secretary of the Indian Bank Employees Union and 29 documents would be marked as Management documents 1 to 29. On the other hand, on behalf of the employee, besides examining himself as D.W.1 ,he would also examine two other persons as D.Ws.2 and 3 for oral evidence, who are said to be closely associated with the formation of Indian Bank Employees Union (M.L.) and marked 12 documents, which are the letters of the drawers of the cheques permitting the cheques to be used for the purpose of Indian Bank Employees Union (M.L.).

6. Based on the above evidence placed on record, the Enquiry Officer by his

order dated 21.6.1997 would ultimately hold that excepting charge No.1, which is not proved, all other charges are proved. Based on the above said findings of the Enquiry Officer, the third respondent/Zonal Manager and Disciplinary Authority having accepted the findings of the Enquiry Officer regarding charges 2 to 5 disagreed with the findings of the Enquiry Officer that Charge No.1 was not proved and further observing that the petitioner in his reply in defence admitted the opening of a SB Account in the name and style of `S.Madhavan" and further confessed as D.W.1 that he has not submitted any documentary evidence such as resolution for opening of an account in the name of IBEU (ML), would hold that the Charge No.1 also stands proved by his order dated 24.6.1997 and after giving a personal hearing to the petitioner on 25.6.1997 regarding the proposed punishment of reduction of pay by two stages for each charge proved and to run the same concurrently, by his order dated 28.6.1997 had imposed the said punishment of reduction to lower stage of pay by two stages for each charge proved and ordered all the punishments to run concurrently. Thereafter, by the order dated 28.6.1997, the suspension of the petitioner was revoked and got posted at SSI, Tiruppur Branch. Thereupon, on attaining the age of superannuation, the petitioner retired from the services of the respondent Bank on 30.6.1997.

7. It further comes to be known that aggrieved of the punishment imposed on him by the disciplinary authority, the petitioner had preferred an appeal to the second respondent and the said appeal also having come to be rejected by order dated 22.10.1997, the petitioner made a representation to the Assistant Labour Commissioner (Conciliation) seeking to initiate conciliation proceedings in respect of the penalty imposed on him and since the Assistant Labour Commissioner by his order dated 27.8.1998 replied that as an individual, the petitioner could not raise a dispute in this regard and that the dispute had to be raised through the Union, the petitioner had come forward to file the above writ petition on grounds such as (i) that the matter in issue can at the best be described as a matter between the Indian Bank Employees Union and the Indian Bank Employees Union (M.L.) and between the members of the latter Union and the petitioner inter se and that the Management cannot in any way claim to have any interest in the issue or claim to have suffered any loss on account of the alleged transactions; (ii) that in respect of the alleged transactions, the petitioner's only involvement was as a customer of the Bank and that he had no role whatsoever to play as an employee of the Bank and the alleged conduct of the petitioner does not amount to any misconduct under the relevant service regulations much less the misconduct of having caused loss to the Bank and he has not done anything which can cast any doubt on his integrity as an employee of the Bank; (iii) that para 19.5(j) of the bipartite settlement dated 19.10.1996 reads: "doing any act prejudicial to the interests of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss" and there is absolutely no basis for the management in this case to even allege that the petitioner has committed the gross misconduct under the said provision of law and the very

fact that the Management has chosen to invoke the said provision indicates that the Management has not acted in the non-partisan manner in which it is expected to in so far as the trade union activities of the workers are concerned; (iv) that following the conclusion of the departmental proceedings, the opportunity of the petitioner for showing cause was restricted to the proposed punishment and no opportunity of showing cause was afforded in respect of the acceptance of the findings of the Enquiry Officer and this vitiates the impugned order of penalty; (v) that the disciplinary authority, in his order, has not disclosed any reason for reversing the finding of the enquiry officer in respect of the first charge; (vi) that there is no evidence adduced on the part of the Management that the petitioner had wrongfully appropriated the sum of Rs.14,500/= and on the other hand, the depositions of two of the Management witnesses who were drawers of the cheques in issue testify to the innocence of the petitioner; (vii) that the impugned order of the appellate authority is a cryptic, one paragraph order, which does not consider the various grounds raised by the petitioner and thus it suffers from non-application of mind; (viii) that the Management has acted at the behest of the Indian Bank Employees Union and initiated the departmental proceedings and acted as a pawn in the game of the said Union to victimise the members of the breakaway group and to deter other employees from joining them; (ix) that the conduct of the Management clearly amounts to the unfair labour practices enumerated under clauses 1 and 4 of the fifth schedule of the Industrial Dispute Act, 1947; (x) that the investigation conducted by K.S.Gnanasekar, Manager, Zonal Inspectorate, Bangalore is not a detailed and thorough one and the said Officer did not even bother to contact the petitioner; (xi) that the disciplinary authority did not take into account the past unblemished record of service of the petitioner while proceeding to impose a penalty on him and the punishment imposed did not commensurate with the charges. On such grounds, the petitioner would pray to allow the above writ petition.

8. The respondents would file a counter, in which besides generally denying the allegations of the petitioner, they would submit that the petitioner did not have unblemished record of service and on an earlier occasion he was issued with a chargesheet dated 6.9.1984 and punishment was also awarded but those punishments were kept in abeyance since in the dispute raised by the Indian Bank Employees Union, both the parties were agreeable for voluntary arbitration; that on 11.3.1985 also the petitioner was issued with a show-cause notice for willful insubordination and disobedience and thereafter the proceedings were dropped and similarly on 7.12.1987, the petitioner was issued with a show-cause notice for having instigated other staff members to stop doing the work and also for abusing the Manager.

9. The respondents would further submit that in the departmental proceedings, the petitioner admitted the fact that he received the cheques favouring only 'Indian Bank Employees Union' but had retained 11 cheques totalling in all a sum of Rs.14,500/= and he has inserted the letters 'ML' without getting any authentication from the drawers of the cheques or their endorsement on the

respective cheques; that the allegation that the petitioner deposited the cheques after obtaining the authorisation letters of the drawers of the said cheques is purely an afterthought inasmuch as if he had got the consent of those persons, he would have got the payee's name altered and duly authenticated by the drawers of the cheques instead of getting the authorisation letters from them belatedly and only to cover up the misappropriation of the said amount, he had obtained the consent letters from the drawers, after depositing the cheques to the credit of the new account opened in his name with the clandestine insertion '(ML)' made by him; that in the affidavit filed in support of this writ petition also, he has submitted that out of the funds he collected he had retained 11 cheques for a sum of Rs.14,500/= as the said amount remained to be paid to him for a long period by the Indian Bank Employees Union since 'it was the only way for him to recover the amount' and this clearly show the intention of the petitioner to misappropriate the said sum of Rs.14,500/= and to cover up such misappropriation, he had spelt out the name of a new Union which closely resembles the name of Indian Bank Employees Union; that the enquiry was conducted with fair and reasonable opportunities for the petitioner; that it is incorrect to state that the matter in issue is between the Indian Bank Employees Union and the Indian Bank Employees Union (ML) inasmuch as the cheques were collected by the petitioner in the name of the Indian Bank Employees Union only and deposited in his personal savings bank account, which was opened prior to the formation of the new Union, with clandestine and offensive alterations; that the alterations done by the petitioner were not authenticated by the drawers of the cheques and if an employee of the Bank materially alters the cheques issued by its customers and encash the cheques, it prejudicially affects the operations of the Bank and the Bank will be put to loss and it amounts to conversion for which the Bank may have to compensate the loss suffered by its customers and such an act of the petitioner is really an act prejudicial to the interest of the Bank and therefore it attracts Para 19.5(j) of the Bi-partite settlement. The respondents would further submit that the respondent Bank is a public sector Bank dealing with the public money and utmost integrity and honesty is expected from an employee of the Bank; that the petitioner has approached this Court after one year of the passing of the impugned order and only proper punishment was imposed on the petitioner. Further submitting that the respondents have settled the terminal benefits payable to the petitioner and the same had been received by him, the respondents would pray to dismiss the above writ petition with exemplary costs.

10. During arguments, the learned counsel appearing on behalf of the petitioner would submit that there are two Unions; that the petitioner, who was the Vice-President of the parent Union, after his defeat in the subsequent election, headed a newly formed separate Union by name Indian Bank Employees Union (ML) and in such capacity started dealing with the donation cheques operating on the Bank accounts of the Union funds; that the total amount involved is Rs.14,500/=; that if at all, it would have been a prejudice to the other members of the Union but

definitely not to the Bank and in a vindictive manner, the Bank acted initiating the disciplinary proceeding against the petitioner. The learned counsel would then cite the following judgments:

[1 1. Yoginath D. Bagde Vs. State of Maharashtra and Another,

2. The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another,

11. So far as the first judgment cited above is concerned, it is a case where the disciplinary authority while disagreeing with the findings of the enquiry officer holding the delinquent not guilty of the charges framed against him, did not give any opportunity of hearing to the delinquent before taking a final decision in the matter relating to the findings on the charges framed against him and only a show-cause notice was issued to him regarding penalty proposed to be imposed on him, the Honourable Apex Court, relying on its own earlier decision delivered in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, wherein it has been categorically held that "if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide at that stage an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper", has held:

"The delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. Formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2). So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about closure of enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This being a constitutional right of the employee, cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

12. In the second judgment cited above, it has been held:

"Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But it cannot be overlooked that the departmental authority ... is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

Citing the above judgments, the learned counsel would further submit that though the disciplinary authority disagreed with the findings of the Enquiry Officer regarding Charge No.1, no opportunity of being heard, as envisaged in the above said first judgment of the Apex Court, has been given to the delinquent before imposing the punishment and such of the perverse findings of the disciplinary authority are liable only to be quashed and would pray to allow the above writ petition.

13. On the other hand, the learned counsel for the respondents would highlight that material alterations have been effected in the cheques by the petitioner as has been brought forth and established on evidence in the domestic enquiry and therefore the enquiry authority has reasons to give his finding holding the charges proved, concurring with the same, the disciplinary authority has also appropriately punished the delinquent on such proved charges and since the punishment was imposed by the disciplinary authority based on the ample evidence made available on record, this Court, since not sitting on appeal of the findings of the disciplinary authority, cannot interfere with the punishment imposed by the disciplinary authority. In support of his contention, the learned counsel for the respondents would also cite the following judgments:

1. State of Orissa Vs. Bidyabhushan Mohapatra,

2. 1970 II LLJ 56 (BURN & CO.LTD. vs. WORKMAN AND ANOTHER)

3. Union of India (UOI) Vs. Parma Nanda,

14. So far as the first judgment cited above is concerned, the Full Bench (5 Judge Bench) of the Apex Court has held:

"... the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanor established. The reasons which induce the punishing authority, if

there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court...."

15. In the second judgment cited above, wherein an industrial employee was dismissed from service for having been found guilty of two charges and the Labour Court dealing with the dispute had ordered reinstatement of the employee on the ground that one of the charges was not made out, the Division Bench of the Apex Court has held:

"The labour Court had jurisdiction to see whether the board of enquiry had observed the rules of natural justice and conducted the enquiry in a manner to which no exception could be taken. If these conditions were fulfilled and if the standing order of the company entitled the board to pass an order of removal from service in case of major misdemeanor, it was not within the jurisdiction of the labour court to order reinstatement of the worker."

16. In the third judgment cited above, a three Judge Bench of the Honourable Apex Court has held:

"The Tribunal cannot also interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter."

17. Citing the above judgments, the learned counsel for the respondents would submit that a fair opportunity was afforded to the petitioner at all stages of the enquiry and would pray to dismiss the above writ petition.

18. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that in the rivalry between two Labour Unions, the first one the parent Union of which the petitioner himself was the Vice-President earlier and having been defeated in the subsequent election, he seems to have started the rival Union and in dealing with the funds of the Union, has operated the cheques issued by the Management Bank on his opening a new account in the name of the new Union started in his capacity as the Organiser of the same and on a complaint lodged with the respondent Bank by the newly elected Secretary of the parent Union regarding certain irregularities in handling the funds of the parent Union by the petitioner under 11 cheques totalling to a sum of Rs.14,500/=, the respondent Bank has initiated the disciplinary proceeding against the petitioner and has framed the charges, which have already been extracted supra in Para No.4.

19. In the above circumstances, if assessed on the outer periphery of the charges coming to be framed against the petitioner by the respondent Management based on the complaint lodged by the rival Union Secretary in dealing with the funds of the Union and not that of the Bank, the foremost question that arises for consideration is `whether the respondent Bank could initiate disciplinary proceedings against the petitioner as it has initiated in the

case in hand?"

20. So far as the first charge is concerned, opening a Savings Bank account in the name and style of "S.Madhavan, Organiser, Indian Bank Employees Union (M.L.)" in S.B. Account No.16270 in the first respondent Bank at Tiruppur Branch, by remitting a sum of Rs.100/= in cash, no illegality or irregularity could be attributed to the petitioner for having opened a Bank account in the manner alleged therein since the petitioner is not either prohibited or debarred by any law from opening an account in the name of the newly started employees Union. Though this charge later came to be held not proved by the Enquiry Officer, still it is relevant for consideration to analyse the intention and objection sought to be achieved on the part of the Management in framing the said charge. No bonafide intention or motive seems to be behind framing this charge on the part of the respondent Management.

21. Secondly, collecting and retaining the cheque-leaves, since being the result of the first charge, for which a person who opened the new S.B.Account is entitled to, no delinquency or loss to the Management could be attributed for the delinquent as a result of which this charge cannot also be said to have been framed by the Management on bona fide ground or reason. Pertaining to the same charge, drawing the amounts shown therein issuing 11 cheques for a total sum of Rs.14,500/=, it is the admitted case of the first respondent that the amounts drawn therein have nothing to do with the first respondent at all since in the charge itself it is clearly indicated that in his capacity as the Vice-President of the Indian Bank Employees Union, he has operated the bank account that is not admittedly belonging to the first respondent. Therefore, the question of framing the third charge cannot also arise, since the first and second charges are not held valid and there is no cause of action for the first respondent Bank to question the validity of such an act perpetrated on the part of the petitioner, even presuming that there is material alteration committed on his part.

22. It is interesting to note that from the vague allegation, no commission of any offence nor delinquency is made out on the face of the third charge since it only reads that "with an ulterior motive of wrongfully enjoying the proceeds of cheques", the petitioner is said to have caused material alteration by insertion of the letters "ML". Since it is the admitted case of the petitioner that the account was opened and the cheques were operated in the name of the new employees Union started by him after his defeat in the election. Therefore, on the face of the charges, it cannot at all be held a material alteration caused in the name of the payee much less with an ulterior motive or with intent to obtain wrongful gains.

23. Charges No.4 and 5 deal with the Bank account operation held by the petitioner issuing self-cheques in the name of the Indian Bank Employees Union (ML) as its Organiser and the manner in which the Bank accounts are operated withdrawing certain amounts. By these two charges, no specific offences could be alleged to have been committed because of the nature of the first three

charges especially when operation of the cheques had already been brought under charge Nod.2. It is fantastic to note that as a footnote to all the charges it is mentioned that "the acts of wrongfully gaining of Rs.14,500/= belonging to the Indian Bank Employees" Union, Madras, if proved, will amount to doing any act prejudicial to the interest of the Bank involving or likely to involve the Bank in serious loss and will therefore amount to gross misconduct". No mention need be necessary that all the charges have been admittedly framed without jurisdiction and without any cause of action for the first respondent to frame charges since only after proof of the allegations contained in the complaint, admittedly by the first respondent, the Bank will be at loss thus making it in no uncertain terms that prior to such proof the acts alleged to have been perpetrated on the part of the petitioner no case is made out much less against the Bank so as to either give a cause of action for a proceeding of this sort to be initiated or conduct the domestic enquiry or to give a finding of holding the petitioner guilty of the said delinquencies much less the disciplinary authority to punish him with such sentence of punishments.

24. In short, there could neither be a complaint lodged by the complainant of this sort before the first respondent nor could the first respondent initiate the disciplinary proceeding, since absolutely no delinquency or criminality or irregularity committed by the petitioner against the Management/the first respondent, much less as narrated in the untenable charges framed. Therefore, it is safe to conclude that the Management without any jurisdiction to entertain the complaint of such nature, has, at the cost of the Bank, initiated a wrong proceeding against the petitioner with ulterior motives of quelling the new Union started by the petitioner joining hands with the executives of the other Union with intent to harass the petitioner which alone comes to be seen on a overall consideration of the manner in which the first respondent Bank has dealt with the subject from its very inception.

25. For all the above discussions held, the conclusion that could be arrived at is that there is no pith or marrow in substance for the Management to proceed against the petitioner on the complaint lodged by the President of the rival Union, which, in the circumstances of the allegations, would lie only before the police on which a criminal case could be registered, if at all any offence could be contemplated in the said complaint. It is only in between the complainant and the petitioner herein and the Management being a separate entity under pretext that the petitioner opened the account and operated on it regarding the funds of the erstwhile Union which the petitioner headed once or the other Union which has been started anew by the petitioner, the management has absolutely no reason to interfere with since it is in no manner concerned with the cheque amounts involved which is admittedly that of the Union.

26. Therefore, it is a flat case wherein the Management has no cause of action to interfere with or initiate the disciplinary proceeding much less in the manner done in the case in hand since none of the charges are relating to the

Management. Therefore, the Management assuming that it is the authorised agent of the Indian Bank Employees Union, Madras, stating that the said `acts brought forth in charges No.1 to 5 being acts of wrongfully gaining Rs.14,500/= belonging to the Indian Bank Employees Union, Madras" and again stating that `if it is proved, will amount to doing any act prejudicial to the interest of the Bank involving or likely to involve the Bank in serious loss and will therefore amount to gross mis-conduct", had deliberately initiated the domestic enquiry on hypothetical, imaginary, unconnected and illusory charges which have absolutely no nexus to the Management in any manner. Only in order to bring the petitioner to submission to the dictates of the Management, at the cost of the time and money of the Bank and the exchequer, the Management had initially succeeded in recording a guilty finding based on which the petitioner had been punished with reduction of pay by two stages for each charge held proved. Left with no option, the petitioner has come forward to file the above writ petition seeking to quash the order of the third respondent dated 24.6.1997 but also that of the second respondent dated 22.10.1997 further seeking to direct the first respondent to pay the petitioner his full pay and allowances for the period of his suspension by treating the said period as one on duty and further direct the first respondent to pay the petitioner his full wages for the month of June, 1997 and his retirement dues in full.

27. The petitioner is not only justified in becoming entitled to the relief sought for in its entirety but also for an exemplary cost on account of the deliberate wrong proceeding initiated against him thus causing not only physical and monetary loss and hardship but also mental agony and affliction coupled with humiliation and loss of reputation in the Society and at the work spot. Hence, the following orders:

In result,

(i)the above Writ Petition succeeds and the same is allowed with an exemplary cost of Rs.10,000/= (Rupees Ten Thousand Only) payable by all the respondents to the petitioner within thirty days from the date of the copy of this order is made ready.

(ii)The order of the third respondent bearing No.CZV:DPC:193:97, dated 24.6.1997 and of the second respondent relating to his order dated 22.10.1997 thus rejecting the appeal of the petitioner are hereby quashed.

(iii)The first respondent is directed to pay the petitioner his full pay and allowances for the period of his suspension by treating the said period as one on duty and also to pay the petitioner his full wages for the month of June, 1997 and his retirement dues in full.