

(2013) 06 MAD CK 0195

In the Madras High Court

Case No : Writ Petition No. 29282 of 2003

The Cuddalore District Central Co-operative Bank Ltd.

APPELLANT

Vs

The Presiding Officer Labour Court and L. Joseph
Mariyanathan

RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Constitution of India, 1950 — Article 226, 311(2)
Industrial Disputes Act, 1947 — Section 11A, 33(2)(b)

Citation : (2014) LabIC 651 : (2013) 3 LLJ 346 : (2013) 3 LLN 748

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : G. Venkataraman for M/s. Aiyar and Dolia, for the Appellant; K.M. Ramesh for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The Management of Cuddalore District Central Co-operative Bank has come up with the above writ petition challenging an award of reinstatement with full back wages and all consequential benefits passed by the Labour Court, Cuddalore. Heard Mr. G. Venkataraman, learned counsel for the petitioner and Mr. K.M. Ramesh, learned counsel for the second respondent-workman.

2. The second respondent was appointed as an Assistant in the petitioner-Bank in the year 1973. He was promoted as Secretary in the year 1983.

3. After an audit was conducted for the period 1985-86, disciplinary proceedings were initiated against the second respondent and charge memo dated 29.4.1987 was issued. The second respondent did not submit any explanation. Therefore, an enquiry followed.

4. Three witnesses were examined on the side of the Management and 40

documents were marked. The second respondent did not examine any witness, nor did he produce any document.

5. The Enquiry Officer held the charge Nos. 1, 2, 3, 6, 7 as well as the imputations in clauses (a) and (d) of charge No. 8 as proved. He held charge Nos. 4, 5 and the other imputations of charge No. 8 not proved.

6. The copy of the enquiry report dated 20.3.1992 was forwarded to the second respondent and his explanation sought. Thereafter, by an order dated 12.3.1993, the second respondent was dismissed from service. The petition filed by the Management u/s 33(2)(b) of the Industrial Disputes Act, 1947, in Approval Petition No. 20 of 1993 was allowed and the Tribunal granted approval by its order dated 08.3.1995.

7. The second respondent thereafter raised an industrial dispute in I.D. No. 92 of 1996. Before the Labour Court, the workman filed 5 documents and the Management filed about 88 documents. The second respondent also made an endorsement to the effect that the domestic enquiry was conducted in a fair and proper manner and that the dispute can be decided in terms of Section 11-A. Thereafter, the Labour Court passed an award on 25.3.2003, holding that none of the charges stood proved and that therefore, the second respondent was entitled to be reinstated with full back wages. Challenging the said award, the Management has come up with this writ petition.

8. Admittedly, an endorsement was made before the Labour Court on behalf of the workman that the enquiry was held in a fair and proper manner. Therefore, the scope of the adjudication that was required to be undertaken by the Labour Court was confined only to what is stipulated by Section 11-A of the Industrial Disputes Act, 1947. This is something on which the learned counsel on both sides have no dispute.

9. In the light of the admitted fact that the scope of the adjudication by the Labour Court was confined only to Section 11-A, Mr. G. Venkataraman, learned counsel for the petitioner/Management contended that the Labour Court acted beyond the jurisdiction conferred u/s 11-A, as though it was an Appellate Authority. Instead of merely testing whether the findings of the Enquiry Officer were perverse or not and whether the findings of the Enquiry Officer were based upon any acceptable evidence or not, the Labour Court assessed the evidence independently, without even a reference to the enquiry report and came to a conclusion that the charges were not proved. This, according to the learned counsel for the petitioner, resulted in a serious miscarriage of justice.

10. In brief, the contention of the learned counsel for the petitioner is actually two fold. They are (i) that without even recording a finding as to whether the findings of the Enquiry Officer were perverse or not, the Labour Court went into a detailed analysis of the charges and evidence and came to an independent conclusion; and (ii) that unless the findings of the Enquiry Officer were based on no evidence or were perverse, the Labour Court ought not to have acted as an

Appellate Authority and interfered with the findings of the Enquiry Officer. In support of this two fold contention, the learned counsel for the petitioner relied upon a few decisions, starting from the decision of the Supreme Court in Firestone.

11. Since the scope of the enquiry to be conducted by me is confined only to the aforesaid two fold contention, let me now have a look at the principles enunciated in the decisions relied upon by the learned counsel for the petitioner, before proceeding to consider the award of the Labour Court and the report of the Enquiry Officer.

12. In *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, the interpretation to be given to Section 11-A inserted with effect from 15th December 1971, was considered by the Supreme Court. The decision in Firestone took note of the Statement of Objects and Reasons behind the amendment Act and the four principles laid down by the Supreme Court in its previous decision in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, It was held in *Indian Iron & Steel Co. Ltd.* that the Tribunal could interfere (i) when there is want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the Management is guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials, the finding is completely baseless or perverse. After referring to the above four principles, the Supreme Court referred to various decisions which dealt with the consequences arising out of an employer not holding any enquiry at all or holding an improper enquiry. After taking into account the right of an employer to lead evidence before the Industrial Tribunal, the Supreme Court summed up the broad principles that held the field as on 15.12.1971, the date of coming into force of Section 11-A. Thereafter, from paragraph 29 of its decision, the Supreme Court considered the question as to whether Section 11-A brought about any changes in the legal position mentioned in paragraph 27 and if so, to what extent.

13. To find an answer to the above question, the Supreme Court divided the cases into two categories, namely, (i) those where an employer had held a proper and valid domestic enquiry; and (ii) those where there has been no enquiry at all or there was a defective enquiry. Insofar as cases falling under the first category are concerned, the Supreme Court categorically held in paragraph 32 that "the Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out". As though to reinforce the above principle, the Supreme Court also pointed out that "what was once largely in the realm of the satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter". Again in paragraph 36, the Court reiterated that "even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved".

14. Therefore, Mr. G. Venkataraman, learned counsel for the petitioner admitted

that the Labour Court today has the power to differ from the finding of the Enquiry Officer. However, the said power is subject to two conditions. A clue to such conditions could be found out from paragraphs 32 and 48 of the decision in Firestone. The first clue is that the power to differ from the finding of the Enquiry Officer could be exercised only "if a proper case is made out". The second clue indicated in paragraph 48 is that this power has to be exercised by the Court "by giving cogent reasons". According to the learned counsel for the petitioner, the award of the Labour Court in the case on hand would fail both these tests.

15. Though the learned counsel for the petitioner also relied upon three decisions of the Supreme Court, one in State of Orissa Vs. Bidyabhushan Mohapatra, , the second in Burn & Co. Ltd. v. Workman (1970 (2) LLJ 56) and the third in Union of India (UOI) Vs. Parma Nanda, , I do not think that they would apply to the case on hand. The first and third decision arose out of disciplinary proceedings initiated against the Government servants and the protection afforded under Article 311(2) of the Constitution. The second decision related to an industrial employee, but the said case arose before the introduction of Section 11-A. Therefore, I would not advert to these decisions.

16. However, the learned counsel for the petitioner relied upon the following decisions which arose after Firestone and all of which take note of the decision in Firestone. Therefore, now let me deal with each one of them.

17. In Anna Transport Corporation Ltd. Vs. Presiding Officer, Labour Court and Another, , M. Karpagavinayagam, J, set aside an award of the Labour Court, which held the charges against a driver not proved. The said case also was one where the enquiry was not assailed as unfair or improper. But, the Labour Court independently assessed the evidence and came to the conclusion that the charges were not proved. But, the learned Judge found the findings of the Labour Court to be perverse and set aside the same in a writ petition under Article 226.

18. But, while doing so, the learned Judge applied the twin tests laid down in Firestone, namely, (i) whether a proper case was made out, and (ii) whether the Labour Court gave cogent and convincing reasons or not. Incidentally, the learned Judge also found that the Labour Court failed to consider some of the vital documents produced by the Management and that the Labour Court did not even choose to advert to any of the reasonings given by the Enquiry Officer. Therefore, on the basis of the decision in Anna Transport Corporation Ltd. Vs. Presiding Officer, Labour Court and Another, it is contended by Mr. G. Venkataraman, learned counsel for the petitioner that where the Labour Court failed to consider some of the vital documents and where the Labour Court did not advert to reasonings of the Enquiry Officer, the award would be vitiated.

19. In Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane,), the Supreme Court was concerned with the case of a conductor in State Transport Corporation, who was caught with unaccounted money of Rs. 93/- over and above the amount equivalent to the tickets issued to him. The Labour Court, after holding that a fair

and proper enquiry had been conducted by the Management, set aside the order of dismissal on the ground that the amount in possession of the conductor could not be taken to be the amount received from the passengers. While allowing the appeal of the Transport Corporation, the Supreme Court pointed out that strict and sophisticated rules of Evidence Act would not apply to a domestic enquiry. While holding so, the Court pointed out in paragraph 10 that once a domestic Tribunal comes to a particular conclusion based upon the evidence, it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion. Therefore, on the basis of this decision, the learned counsel contended that the Labour Court was not entitled to act as an Appellate Authority over the findings of the Enquiry Officer.

20. In *Dy. General Manager, S.B.I. Vs. Roy Samuel*, the Kerala High Court held that the Industrial Tribunal is not entitled to simply brush aside the findings of the enquiry and that due credit had to be given to the findings of the Enquiry Officer.

21. In *Anand Regional Co-op. Oil Seedsgrowers Union Ltd. Vs. Shaileshkumar Harshadbhai Shah*, the dismissal of an employee of a Co-operative Society was set aside by the Labour Court on the ground that the punishment of dismissal was excessive and exorbitant. The award of reinstatement with 25% back wages passed by the Labour Court was confirmed by the High Court. When the Management filed an appeal before the Supreme Court, the Supreme Court found fault with the Labour Court for not assigning any reason as to how the findings of the Enquiry Officer were perverse. But, I think the observations so made by the Supreme Court in paragraph 22 of its decision, was with specific reference to the post held by the workman and the nature of the allegations against him vis-a-vis the responsibilities that he was supposed to discharge. As a matter of fact, the Supreme Court modified the penalty into one of voluntary retirement, mainly on the ground that seven other employees against whom similar allegations were made, were allowed to go on voluntary retirement.

22. In *Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned Workman, Ram Pravesh Singh*, a workman was dismissed from service on allegations of indecent, riotous and disorderly behaviour and of leaving the place of work without permission. Before the Labour Court, the workman conceded that the domestic enquiry conducted by the Management was fair, proper and in accordance with the principles of natural justice. However, the Labour Court set aside the order of dismissal on the ground that the charges were not substantiated. The Labour Court awarded reinstatement with 50% back wages. The High Court upheld the award and the Management went on appeal to the Supreme Court. Primarily, three contentions were raised by Management before the Supreme Court, as could be seen from paragraph 11 of the report. They are: (a) that the findings recorded in a domestic enquiry cannot be set aside or interfered with by the Labour Court by substituting its independent opinion in the place of the one arrived at by the domestic Tribunal; (b) that the standard of

proof in a domestic enquiry is not proved beyond reasonable doubt, but, only preponderance of probabilities; and (c) that the Labour Court cannot rely upon an order of acquittal passed by a criminal Court, since the standard of proof is completely different.

23. Insofar as the first contention is concerned, the Supreme Court relied upon the decisions in Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, and U.P. State Road Transport Corporation Vs. Vinod Kumar, and held that an Industrial Tribunal cannot act as an Appellate Tribunal and interfere with the findings recorded by the domestic Tribunal. In paragraph 18 of the report, the Supreme Court indicated that when the Enquiry Officer accepted the testimony of the witnesses produced by the Management and when he reached a legitimate conclusion, which could be arrived at, then it would not be open to the Industrial Tribunal to substitute the said opinion by its own opinion.

24. Interestingly, an argument was advanced in West Bokaro Colliery that after the decision of the Supreme Court in Firestone and in The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others, it was open to the Labour Court to come to a conclusion in exercise of its jurisdiction u/s 11-A. The said argument was dealt with by the Supreme Court in paragraph 21 of the report as follows:

Learned counsel for the respondent cited two cases-Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. and South Indian Cashew Factories Workers' Union v. Kerala State Cashew Development Corpn. Ltd., to contend that the Labour Court in exercise of its jurisdiction u/s 11-A could have come to a different conclusion. There is no quarrel with this proposition of law. The Labour Court could have awarded lesser punishment in the given facts and circumstances of the case. In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic tribunal by substituting its opinion in place of the opinion of the domestic tribunal.

25. In Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Ltd. and Another, , the Supreme Court was concerned with a case where the domestic enquiry was held to have been conducted in a fair and proper manner, in compliance with the principles of natural justice. However, after appreciating the evidence on record, the Labour Court held the charges not proved. Consequently, the Labour Court ordered reinstatement. On a writ petition filed by the Management, the award of the Labour Court was modified into one of reinstatement with 50% back wages. But, the Division Bench of the High Court upset the award on the ground that the Labour Court could not have held the charges not proved. The Union went on appeal to the Supreme Court and the Supreme Court considered the interpretation and application of Section 11-A of the Industrial Disputes Act, as enunciated in Firestone way back in 1973. After analysing the legal position before the insertion of Section 11-A and the

interpretation given to Section 11-A in Firestone, the Supreme Court pointed out in paragraph 20 of the report that the legal principle (about the Tribunal's jurisdiction to differ from the findings of the domestic Tribunal) is neither in doubt, nor in dispute. However, the question is always one of the application of the principle. Thereafter, the Court pointed out in paragraph 21 that the proper issue to be posed is as to whether a case for interference is made out in the circumstances or not.

26. Adding a note of caution that Firestone should be understood in the context in which it was rendered, the Supreme Court pointed out in paragraph 28 of the report that Section 11-A had to be applied at different stages, namely, (i) first when the validity or legality of the domestic enquiry is in question; and (ii) next at the stage when the issue is determined in favour or against the Management.

27. On the question as to the scope of interference, even in cases where the domestic enquiry is held to be fair and proper, the Supreme Court laid down in paragraphs 29 and 31 of the report the following principles.

29. Indisputably, in the event, fresh evidence is adduced before the Labour Court by the management, the Labour Court will have the jurisdiction to appreciate the evidence. But, in a case where the materials brought on record by the enquiry officer fall for reappraisal by the Labour Court, it should be slow to interfere therewith. It must come to a conclusion that the case was a "proper" one therefor. The Labour Court shall not interfere with the findings of the enquiry officer only because it is lawful to do so. It would not take recourse thereto only because another view is possible. Even assuming that, for all intent and purport, the Labour Court acts as an appellate authority over the judgment of the enquiry officer, it would exercise appropriate restraint. It must bear in mind that the enquiry officer also acts as a quasi-judicial body. Before it, parties are not only entitled to examine their respective witnesses, they can cross-examine the witnesses examined on behalf of the other side. They are free to adduce documentary evidence. The parties as also the enquiry officer can also summon witnesses to determine the truth. The enquiry officer can call for even other records. It must indisputably comply with the basic principles of natural justice.

30....

31. It is one thing to say that the finding of an enquiry officer is perverse or betrays the well-known doctrine of proportionality but it is another thing to say that only because two views are possible, the Labour Court shall interfere therewith. In other words, it is one thing to say that on the basis of the materials on record, the Labour Court comes to a conclusion that a verdict of guilt has been arrived at by the enquiry officer where the materials suggested otherwise but it is another thing to say that such a verdict was also a possible view.

28. After laying down as above, the fundamental premise on which the principles laid down in Firestone has to be applied, the Supreme Court pointed out as to how even a first Appellate Court should be slow to interfere with a findings of

fact recorded by a trial Court, while exercising jurisdiction in terms of Section 96 of the Code. Then, in paragraph 39 of the report, the Court held that the Labour Court cannot overturn a decision of the Management on ipse dixit and that though its jurisdiction u/s 11-A is very wide, it must be judiciously exercised.

29. Taking clue from a reference to Section 96 of the CPC made by the Supreme Court in *Usha Breco, Mr. G. Venkataraman*, learned counsel for the petitioner relied upon the decision of the Supreme Court in *State Bank of India and Another Vs. Emmsons International Ltd. and Another*, which arose out of a civil suit. In the said case, the Supreme Court relied upon its earlier decisions in *Jagannath v. Arulappa* (2005 (12) SCC 303) and *Chinthamani Ammal Vs. Nandagopal Gounder and Another*, to the effect that while a Court of first appeal can re-appreciate the entire evidence, it is the duty of the first Appellate Court to consider the findings recorded by the trial Court.

30. In response, Mr. K.M. Ramesh, learned counsel appearing for the second respondent contended (i) that the law laid down by the Supreme Court in *Firestone* on the scope of the jurisdiction of the Labour Court in terms of Section 11-A, has stood the test of time and hence, the power of the Labour Court to find out if the charges stood proved in the domestic enquiry, is not taken away; (ii) that merely because the Labour Court did not deal with the findings of the Enquiry Officer before coming to its own conclusions on the merits of the charges, it cannot be said that the procedure followed by the Labour Court was erroneous; (iii) that the scope of judicial review under Article 226 over an award passed by the Tribunal is extremely limited; and (iv) that different standards of proofs applicable to criminal trials and domestic enquiries, tend to disappear where serious allegations of fraud, theft, etc. became the foundation of a domestic enquiry.

31. In support of his third contention about the power of judicial review, the learned counsel relied upon two decisions of the Supreme Court, one in *H.S. Chandra Shekara Chari Vs. The Divisional Controller, KSRTC and Another*, and the other in *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another*, .

32. In *H.S. Chandra Shekar Chari*, the Labour Court directed reinstatement with full back wages, on the ground that the charges were not proved. A single Judge of the High Court interfered with the award on the ground that the Labour Court ought not to have re-appreciated the evidence and came to a different conclusion. The Division Bench dismissed the appeal on the ground of limitation. While allowing the appeal of the workman, the Supreme Court held that a High Court had no jurisdiction to enter into the question whether the charges could have been established by better or further evidence. Incidentally, the Supreme Court pointed out that the High Court cannot re-appraise the evidence.

33. In *Indian Overseas Bank*, the question that arose for consideration related to the demand of canteen workers, for the grant of same status, pay and facilities,

as available to Class IV employees of the Bank. In the light of the evidence on record, the Industrial Tribunal held the canteen employees to be entitled to be treated as the workman of the Bank. The award of the Labour Court was set aside by a learned Judge of this Court, but the judgment was set aside on appeal by a Division Bench and the Management went on appeal to the Supreme Court. While dismissing the appeals, the Supreme Court held that this Court, while exercising jurisdiction under Article 226, cannot re-appreciate the evidence and draw its own conclusions of pure questions of fact.

34. But, I do not think that the petitioner is actually calling upon him to re-appreciate the evidence. The real grievance of the writ petitioner is that the Labour Court exercised a jurisdiction not in conformity with what is conferred on it by Section 11-A and that the tests laid down in all decisions starting from *Firestone* for the Labour Court to come to a different conclusion were not satisfied in this case. Therefore, the decisions in *H.S. Chandra Shekar Chari* and *Indian Overseas Bank*, have no application to the case on hand.

35. In support of his fourth contention about the different standards of proof, Mr. K.M. Ramesh, learned counsel relied upon a decision of the Kerala High Court and a Division Bench of this Court. In *P.B. Rocho Vs. Union of India and Others*, T.K. Thommen, J, pointed out that theft is a serious charge. Therefore, irrespective of whether the proceedings are by way of prosecution or disciplinary action or a civil suit, the burden to establish that charge falls heavily upon the person alleging the same. In his own inimitable style, the learned Judge pointed out that the standard of proof varies in either proceeding according to the gravity of the charge and that "what is the appropriate degree of probability that is required in a case, depends on what is at stake". Thus, the learned Judge made a very fine distinction with regard to the theory of preponderance of probabilities, insofar as very serious charges of criminal misdemeanor are concerned.

36. Similarly, in *D. Vincent v. The Director of Government Examinations* (1987 WLR 69), a Division Bench of this Court pointed out that whenever a charge of production of bogus certificate is made against an employee (such as a teacher), it is in effect a criminal charge of fabrication of a document and forgery and that therefore, it would be improper to hold a person guilty of such a charge, except on sufficient and reliable material.

37. In the case on hand, the charges against the second respondent relate to misappropriation and falsification of accounts. Therefore, they are no doubt in the nature of criminal charges and hence, we must keep in mind, the fine distinction in the standards of proof to be applied in a case of this nature.

38. Therefore, on a summation of the principles of law laid down in the decisions cited on both sides, it would be clear that the case on hand has to be decided by testing its facts on the following principles of law:

(i) whether a proper case had been made for the Labour Court to set aside the findings of the domestic Enquiry Officer (as formulated in *Firestone* and *Usha*

Breco)?

(ii) whether the Labour Court had given cogent reasons for exercising such jurisdiction (as required in Firestone)?

(iii) whether the Labour Court acted as an Appellate Court and came to its own conclusion, merely because two views were possible?

(iv) whether the Labour Court acted slow before choosing to interfere with the findings of the domestic Enquiry Officer, while re-appreciating the materials already on record? and

(v) whether the standard of proof applied by the Labour Court was proper or not, especially in a case of this nature?

39. To test whether the award of the Labour Court satisfies the above principles of law, I will now have to go back to the facts of the case. As I have already pointed out, the domestic Enquiry Officer found only charges Nos. 1, 2, 3, 6, 7 and 8(a) & (d) proved and the other charges not proved. Therefore, the Labour Court could have confined itself only to those charges held proved. But, unfortunately, in an attempt to overkill, the Labour Court even went into the charges held not proved by the domestic Enquiry Officer and came to its own conclusion that they were also not proved. Though this discloses the wrong approach adopted by the Labour Court to the dispute on hand, I would just discard it as an aberration. Therefore, I will confine my present discussion only to those charges held proved by the domestic Enquiry Officer and held not proved by the Labour Court.

40. The charge Nos. 1, 2, 3, 6, 7 and 8(a) & (d) are as follows:

Charge No. 1:

that the second respondent cheated the Bank a sum of Rs. 7,000/- by writing the balance available as on 26.02.1986 as Rs. 3,875.46 in the day book, though the actual balance available was Rs. 10,875.46;

Charge No. 2:

that the second respondent collected Rs. 4,600/- from 37 members of the Bank at the rate of Rs. 127/- each on 28.6.1986 towards loan, but paid a sum of Rs. 4,697/- to the Insurance Company, from out of the Bank's savings account, on 01.7.1986 and wrote the same in the miscellaneous account;

Charge No. 3:

that the second respondent caused loss to the Bank, by making payments to various members to the total tune of Rs. 5,937/-, though no amount was payable to any of them;

Charge No. 6:

that the second respondent failed to bring to the day book the loan amount of Rs. 1,384/- recovered from seven borrowers, though the receipt was entered in the loan ledger;

Charge No. 7:

that the second respondent collected an amount of Rs. 2,790/- from ten members, but did not bring the amount to the day book, despite entering the same in the Membership Admission Register;

Charge No. 8(a):

that the second respondent disbursed a sum of Rs. 2,500/- for the purchase of a milch cow under loan No. 193 to a person who was not a member of the Society;

Charge No. 8(d):

that the second respondent failed to submit for audit the documents relating to loan Nos. 40, 41, 42, 50, 149, 152, 168, 169, 170, 171, 172, 183 and 174.

41. In the domestic enquiry, three witnesses were examined. The first witness examined was the Manager in G6 Section of the Head Office of the Bank. The second and third witnesses were the members of the Co-operative Bank, who also had loan accounts with the Bank. Their names are R. Sadasiva Udayar and R. Srinivasa Udayar.

42. The Management also marked 40 documents as exhibits in the domestic enquiry. As pointed out already, the workman had an opportunity to cross examine all the witnesses and there is no dispute about the fact that the enquiry was held in a fair and proper manner.

43. The first charge that the second respondent cheated the Bank, a sum of Rs. 7,000/- by writing the balance available as on 26.02.1986 as Rs. 3,875.46 in the day book, though the actual balance available was Rs. 10,875.46, actually comprises of two limbs of imputations. The first limb is that the member/borrower R. Sadasiva Udayar actually remitted Rs. 6,000/- on 26.02.1986 and closed one loan account and that thereafter, the same member/borrower was granted a fresh loan of Rs. 7,828/- on 27.02.1986. However, the second respondent is alleged to have corrected the amount remitted by the member/borrower as Rs. 4,000/-, as though a balance of Rs. 2,000/- was still left unpaid in the first loan account. Thus, this first limb accounts for a shortfall of Rs. 2,000/-.

44. The second limb of the first charge is that the second respondent wrote miscellaneous expenses falsely to the tune of Rs. 5,000/- on 26.02.1986, so that the amount of Rs. 5,000/- need not be brought into account. Thus, the second limb accounted for Rs. 5,000/-. Together, the first and second limbs totalled to the amount of Rs. 7,000/- involved the first charge.

45. The Enquiry Officer held the first limb of the first charge as proved, in view of

the categorical assertion made by R. Sadasiva Udayar, member/borrower, examined as MW2 in the domestic enquiry, that he actually remitted Rs. 6,000/- on 26.02.1986 and closed the first loan account and that it is only thereafter that a fertiliser loan was granted on the next day, namely, 27.02.1986. In the cross examination of MW2, the second respondent could not break the evidence of Sadasiva Udayar that he actually remitted Rs. 6,000/- and not Rs. 4,000/- on 26.02.1986. MW2 also denied having remitted any amount of Rs. 3,716/- on 09.02.1987. Therefore, two things followed out of the evidence of MW2. They are: (i) that he actually remitted Rs. 6,000/- and not Rs. 4,000/- on 26.02.1986; and (ii) that the defence set up by the second respondent that MW2 remitted the balance amount due only on 09.02.1987 fell to the ground. There was also no explanation as to how MW2 could have been granted a fresh loan on 27.02.1986, if he had not closed the first loan account on 26.02.1986.

46. In respect of the second limb, the imputation is that the member/borrower Srinivasa Udayar, examined as MW3, remitted a total amount of Rs. 8,011.75. The break up of this amount was originally shown as Rs. 6,000/- towards principal, Rs. 1,985/- towards interest, Rs. 8/- towards notice expenses, Rs. 2/- towards the form and Rs. 16.75 towards fee for the valuation. But, the imputation against the second respondent is that in the receipt, the principal amount of Rs. 6,000/- remitted by the member was altered as Rs. 1,000/- and the total amount of Rs. 8,011.75 was altered as Rs. 3,011.75. Therefore, the excess amount of Rs. 5,000/- available with him was adjusted towards expenses written down fictitiously. The expenses allegedly written by the second respondent were:

47. But, Sadasiva Udayar, examined as MW2, asserted that he did not do any transaction on 26.02.1986. The audit found that the miscellaneous expenses of Rs. 1,000/- and the stationery expenses of Rs. 25/- were not supported by any vouchers.

48. Srinivasa Udayar, examined as MW3, maintained that he remitted Rs. 8,011.75. The second respondent did not dispute it. The second respondent did not actually cross examine MW3. The receipt dated 26.02.1986, filed as Ex. M48 (the exhibit numbered as mentioned in the manner in which the same exhibit was marked before the Labour Court) makes it clear that the amount of Rs. 6,000/- was altered as Rs. 1,000/- and the total of Rs. 8,011.75 was altered as Rs. 3,011.75. Therefore, the Enquiry Officer held the second limb of the first charge also as proved.

49. In paragraphs 12 and 13 of its award, the Labour Court dealt with the first limb of the first charge. This relates to the alleged payment of Rs. 6,000/- by Sadasiva Udayar (MW2), on 26.02.1986.

50. A careful reading of paragraphs 12 and 13 of the award of the Labour Court would show that without reference to the manner in which the Domestic Enquiry Officer arrived at the conclusion of guilt, and without finding fault with the

process of reasoning contained in the domestic enquiry report, the Labour Court held the first limb of the first charge not proved. I do not say for a minute that the Labour Court ought to have dealt with the finding of the Enquiry Officer. But, the Labour Court was obliged to test whether the process of reasoning done in the domestic enquiry report was proper and probable. It appears that even reading the enquiry report of the Domestic Enquiry Officer, the Labour Court went into the charges, analysed the evidence and held the first limb of the first charge proved.

51. While doing so, the Labour Court committed a very grave illegality. Ignoring the categorical assertion of Sadasiva Udayar (MW2) (member/borrower) that he actually remitted Rs. 6,000/- on 26.02.1986 under Ex. M44 (as per the Labour Court exhibit numbers), the Labour Court came to the conclusion that he remitted only Rs. 4,000/-. To come to such a conclusion, the Labour Court has given a very curious reasoning in paragraph 13 of the award. The Labour Court has stated that MW2 did not come to the Bank and remitted the money directly and that he sent somebody else to remit the money. Therefore, the Labour Court has stated in paragraph 13 of the report that while Sadasiva Udayar (MW2) failed to produce the original of Ex. M44 and when his representative who came to the Bank and remitted the money was not examined, the amount remitted should be taken only to be Rs. 4,000/- and not Rs. 6,000/-.

52. The above reasoning contained in paragraph 13 of the award of the Labour Court is nothing short of a special pleading for the second respondent. In the cross examination of MW2, it was never even suggested by the second respondent that somebody else came to the Bank on behalf of MW2 and remitted the money on 26.02.1986. On the contrary, the very first question put to MW2 in cross examination was as to whether he came to the Bank directly and remitted the money on 26.02.1986 or not. MW2 said "yes". It is true that MW2 admitted having lost the original of Ex. M44. But, it was nobody's case that MW2 sent someone else as his representative on 26.02.1986 to remit the money.

53. In other words, the second respondent himself did not plead before the domestic Enquiry Officer (i) that MW2 did not come to the Bank directly and remitted the money; and (ii) that the failure of MW2 to examine the person who actually remitted the money, made the assertion of MW2 unbelievable and unworthy of acceptance. But, the Labour Court took cudgels for the second respondent and recorded a finding that MW2 did not go to the Bank directly and remit the money and that therefore, his failure to examine his representative and his failure to produce the original of Ex. M44 indicated the first limb of the first charge to be not proved.

54. Thus, the finding recorded by the Labour Court in paragraph 13 of its award, in favour of the second respondent, in respect of the first limb of the first charge is completely perverse and exhibits a complete negation of the allegations, the defence and the evidence available on record. There can be no dispute about the fact that a Labour Court cannot plead a defence that the workman himself did

not take. The Labour Court cannot record any finding of fact on the basis of such a pleading innovated for the first time in the proceedings before the Court. Therefore, at least insofar as the first limb of the first charge, the award of the Labour Court is completely perverse and not in accordance with the principles of law, on which, a Labour Court ought to test an order of dismissal from service of a workman. Insofar as the second limb of the first charge is concerned, the Domestic Enquiry Officer held the charge proved on the basis of the oral evidence of Srinivasa Udayar (MW3). There was no cross examination of MW3 by the workman. The fact that he remitted Rs. 8,011.75 on 26.02.1986 went unchallenged. The fact that the receipt had an alteration of the figure Rs. 6,000/- as Rs. 1,000/- and the amount of Rs. 8,011.75 into Rs. 3,011.75, is borne out by the receipt itself. Therefore, what was remitted by MW3 on 26.02.1986 was Rs. 8,011.75. If what was brought as receipt was only Rs. 3,011.75, the balance of Rs. 5,000/- should be somehow accounted for. This amount of Rs. 5,000/- is written as expenditure under three different headings. For two headings, there are no supporting vouchers. The third heading relates to a transaction by Sadasiva Udayar (MW2). But, he claimed that he did not do any transaction in his savings bank account on that date. Therefore, the Domestic Enquiry Officer held the second limb of the first charge proved.

55. But, in paragraph 14 of the award, the Labour Court held the second limb of the first charge not proved on account of three reasons namely

(i) the management did not examine Venkatesan to show that there were no supporting vouchers for two out of three items of expenditure, namely stationery expenditure of Rs. 25/- and miscellaneous expenses of Rs. 1,000/-;

(ii) the workman claims that he did not make any alteration in Ex. M48 receipt, wherein the amount of Rs. 6,000/- was altered as Rs. 1,000/- and Rs. 8,011.75 was altered as Rs. 3,011.75; and

(iii) there was no charge that the savings bank account of Sadasiva Udayar was manipulated to facilitate a fictitious entry of expenditure of Rs. 3,975/-.

But, all the above three reasonings of the Labour Court are completely perverse.

56. At the outset, the workman did not examine himself in the domestic enquiry to plead that he did not do alterations in the receipt Ex. M48. In paragraph 14 of the award, the Labour Court has taken the argument advanced on behalf of the workman that he did not make the alteration in Ex. M48. Without such a statement being made by the workman either in the witness box or at least during cross examination of MW1, I do not know how the Labour Court had taken that statement across the bar as an evidence.

57. It is pertinent to note that the Manager of G6 Section of the Head Office of the bank was examined as the first witness-MW1 to speak about all charges and to mark all 40 exhibits. In his chief examination relating to the second limb of the first charge, MW1 categorically stated that it was the second respondent

herein, who altered the amount of Rs. 6,000/- as Rs. 1,000/- and the total of Rs. 8,011.75 as Rs. 3,011.75 in the receipt dated 26.02.1986, thereby misappropriating the amount. MW1 also marked the receipt bearing No. 069901 dated 26.02.1986 as Ex. M8 in the enquiry. The same receipt was marked before the Labour Court as Ex. M48. In the light of a positive assertion in the chief examination by MW1 that the second respondent made an alteration in the receipt, the second respondent was expected to do at the minimum, (i) a formal suggestion in cross examination that the assertion was false; or (ii) a statement made on oath by getting into the witness box claiming that he never made the alteration in the receipt. The second respondent did not do both. The second respondent did not even cross examine MW1 on the above assertion. There was no cross examination of MW3 at all. The second respondent also chose not to go to the witness box. Therefore, a statement made on behalf of the second respondent before the Labour Court across the bar that the second respondent did not make the alteration in the receipt, cannot be accepted by the Labour Court. The acceptance of such a statement, without even an iota of indication to the same in the evidence, is nothing but complete perversity.

58. The non examination of Venkatesan to confirm that there were no supporting vouchers for the expenditure of Rs. 1,025/- was hardly a matter of concern. Similarly, the non framing of a charge about the manipulation of the savings bank account of Sadasiva Udayar was also immaterial. The actual imputation of misconduct was that in order to adjust the amount of Rs. 5,000/- suppressed from the receipt of Srinivasa Udayar, the second respondent created three items of fictitious expenditure, one of which related to the entries in the savings bank account of Sadasiva Udayar. The Management did not frame a separate charge about the manipulation of the savings bank account of Sadasiva Udayar. But, the imputation of misconduct was that there was such a manipulation with a view to adjust the income of Rs. 5,000/- received from Srinivasa Udayar. To prove the main imputations of misconduct, the Management was not required to frame a separate charge about the manipulation of the savings bank account of Sadasiva Udayar. Therefore, the finding of the Labour Court in respect of the second limb of the first charge is also wholly without any basis and is absolutely arbitrary and fanciful.

59. I do not think that I need to go into the findings of the Enquiry Officer and the findings recorded by the Labour Court in respect of the charges 2, 3, 6, 7 and 8(a) and (d), to test whether in respect of each of them, the finding of the Labour Court was perverse or not. The reasons as to why I need not go into each of those charges are as follows:

(i) The findings in respect of the first and second limb of charge No. 1 exposes completely wrong approach adopted by the Labour Court. Both the limbs of the first charge are serious enough warranting a dismissal. To find the second respondent not guilty of both the limbs of the first charge, the Labour Court had actually bent itself backwards and had also advanced special pleadings on behalf

of the workman. Therefore, I need not test the correctness of the findings on each of the charges; and

(ii) As I have pointed out elsewhere, the charges 4, 5 and 8(b) and (c) were actually held not proved by the Domestic Enquiry Officer himself. The Labour Court appears to have been completely ignorant of this fact. Consequently, the Labour Court went into these charges also and came to a conclusion that these charges were not proved. Though I have taken it as an aberration, it is nevertheless an indication of the failure of the Labour Court to understand the scope of its jurisdiction and the role that it was required to play.

60. In the light of the above, I am of the view that the award of the Labour Court is completely perverse and does not satisfy the parameters laid down in Firestone and developed or modified or fine-tuned in the subsequent judgments.

61. Mr. K.M. Ramesh, learned counsel for the second respondent contended that after the dismissal of the second respondent from service, the criminal case ended in acquittal and that in the criminal case, some of the witnesses even turned hostile. But, that is not a matter, which can really be taken note of, in view of the fact that the standards of proof are different.

62. Though it is true that the charges framed against the second respondent are in the nature of criminal charges and that therefore, there must be something little more than a mere preponderance of probability, the test stands satisfied in the case on hand. As pointed out earlier, MW1 and MW3 were not cross-examined in the domestic enquiry. MW2 and MW3 are outsiders to the institution in the sense that they are not co-workers. They are the members/borrowers of the cooperative bank. They have no reason to fix the second respondent into such serious charges. The only witness, who was cross-examined by the second respondent was MW2. But, MW2 stuck to his guns. Therefore, the alteration of amounts mentioned in the receipts, that had the effect of showing a lesser cash balance at the end of the day on the fateful day, stood clearly established, at least for the purpose of departmental enquiry. Hence, the Labour Court ought not to have interfered with the findings of the Enquiry Officer. In view of the above, the writ petition is allowed and the impugned order is set aside. No costs.