

(2016) 07 KL CK 0025

In the High Court Of Kerala

Case No : WA. No. 2141 of 2015 in WP(C). 29093 of 2005 (Against the Judgment in WP(C) 29093 of 2005 Of High Court Of Kerala Dated 22.11.2014)

A. Govindan

APPELLANT

Vs

State Bank of Travancore

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A
Payment of Gratuity Act, 1972 — Section 4(6)(b)(ii)

Citation : (2016) 3 KerLJ 255 : (2016) 3 KLT 110 : (2016) LabLR 1198 : (2016) LIC 3389 : (2016) 3 LLN 408

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Mr. Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. M.P. Ashok Kumar, Smt. Bindu Sreedhar and Smt. R.S. Manjula, Advocates, for the Appellant; Sri. P. Ramakrishnan, SC, State Bank of Travancore, for the Respondent

Final Decision : Partly Allowed

Judgement

Mr. Ramachandra Menon, J.—Interference made by the learned single Judge of this Court setting aside the Award passed by the Labour Court [modifying the punishment of dismissal of the "clerk-cum-cashier" of the respondent Bank for the proven misconduct of manipulating the Registers and Passbook entries of the customers, ordering reinstatement with 50% back wages holding that the said misconduct is not so serious to warrant dismissal] and thus restoring the punishment of dismissal awarded by the management Bank, is the subject matter of this appeal filed by the workman. It is also contended that multiple punishments have been imposed as per a composite order, whereby apart from dismissal, there was denial of Gratuity and Provident fund as well, which hence is sought to be intercepted in this appeal.

2. The appellant, who is an "ex-service man", was employed as Clerk-cum-Cashier in one of the branches of the respondent Bank at Punnad. While so, he

committed certain misconducts involving money transactions, effecting fraudulent entries in the passbook of the customers and registers of the Bank, upon which disciplinary proceedings were initiated against him. A charge memo was issued on 27.05.1999, to which explanation was submitted on 30.06.1999. Since the explanation was not satisfactory, domestic enquiry was ordered on 30.07.1999, on culmination of which, the Enquiry Officer submitted a report on 17.01.2000 finding the appellant guilty of all the charges. A copy of the enquiry report was forwarded to the appellant/workman on 25.01.2000 seeking for his explanation as to the insinuating circumstances brought on record. After considering the explanation dated 28.02.2000, the Disciplinary Authority arrived at Ext. P1 finding on guilt and the proposed punishment of dismissal was communicated to him on 05.05.2000, offering an opportunity of personal hearing. After the personal hearing conducted on 05.06.2000, Ext. P2 final order was passed by the Disciplinary Authority on 24.06.2000 dismissing the employee from service, holding that the proven charges were very serious warranting dismissal.

3. Pursuant to the dismissal from service, an industrial dispute was raised by the appellant and on reference for adjudication to the first respondent Labour Court, Kozhikkode, the dispute was registered as I.D. No. 5 of 2001. Validity of the domestic enquiry was considered as the preliminary issue. The Management examined the Enquiry Officer and produced the enquiry file. Nobody was examined from the part of the worker and no document was produced. After analysing the facts and circumstances, the Labour Court passed Ext. P3 preliminary order, holding that the worker was not able to point out any error or mistake as to the proceedings in the enquiry and he was not able to point out any instance of violation of the principles of natural justice. Accordingly, the domestic enquiry conducted by the management was held as valid and proper.

4. Ext. P3 order was followed by Ext. P4 Award, whereby the Labour Court found that the appellant worker was guilty of charges 1 and 2 levelled against him in relation to the fraudulent transactions. As observed by the Labour Court in paragraph 6 of Ext. P4 Award, gist of the charges 1 and 2 was that; one Narayanan had availed a car loan from the Bank; that he used to entrust money to workman for repayment of the loan instalments, that the workman made certain credit entries in the loan passbook of the borrower, even before the amount came to the hands of the Bank and this was done by making fraudulent adjustment/credit entries in the loan accounts of some other borrowers. The Labour Court observed that, normally, interference would be justified only under rare grounds, where the Court finds that the punishment was unduly harsh or shockingly disproportionate. After the above finding/observation, the Labour Court, in the very next breath held (in the next paragraph) that the proven misconduct was "not of such a serious nature" warranting extreme penalty of dismissal from service and that it was excessive and disproportionate to the misconduct committed. The basis for such findings/interference was that there was no case for the management that the worker had any bad past record; that

the worker had made any illegal profit; that the action of the worker had caused any substantial loss to the management; or that the management had lost confidence in the worker. It was accordingly, that the worker was ordered to be reinstated with 50% back wages, as if denial of 50% of the back wages would be adequate punishment.

5. The above award was challenged from the part of management Bank by filing W.P.(C) No.29093 of 2005 before this Court. Placing reliance on the verdicts passed by the Supreme Court in Regional Manager, U.P.SRTC, Etawah and Others v. Hotilal and another [(2003) 3 SCC 605], State Bank of India and another v. Bela Bagchi and others [(2005) 7 SCC 435] and Federal Bank Employees' Union v. Federal Bank Ltd. [(2008) 2 SCC 612], the learned single Judge observed that, it was never a fit case to have invoked the power of the Labour Court under Section 11A of the Industrial Disputes Act and that there was deliberate act on the part of the workman to commit fraud, causing fraudulent entries" in the customers loan accounts. It was accordingly found that, there could not be any reinstatement; nor could the punishment be confined to mere loss of continuity of service and 50% back wages. Thus Ext. P4 Award passed by the Labour Court was set aside and the punishment of dismissal ordered by the management Bank was restored. This made the workman to approach this Court by way of appeal.

6. Heard Mr. M.P. Ashok Kumar, the learned counsel appearing for the appellant and Mr. P. Ramakrishnan, the learned counsel appearing for the respondent Bank at length.

7. According to the learned counsel for the appellant, three charges were levelled against the workman in terms of Clauses 19.5 (d), 19.5 (j) and 19.7 (d) of the First Bipartite Settlement 1966 (as modified by the 6th Bipartite Settlement dated 14.02.1995). The third charge was not proved. As per the terms of the said settlement, only one punishment could be given by virtue of Clause 19.6. Despite this, multiple punishments have been imposed as per Ext.P2, passed as a composite order, whereby apart from dismissal, there is forfeiture of Gratuity and EPF. There is also an order to recover Rs. 3,000/- towards loss and it has been ordered that, no salary will be paid for suspension period and further that the suspension period will not be counted for any purpose. It is also pointed out that the scope of interference with the Awards passed by Labour Court/Industrial Tribunal at the hands of this Court is very limited, in view of the law declared by the Supreme Court in Harjinder Singh v. Punjab State Ware Housing Corporation [(2010) 3 SCC 192], Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Company Limited and another [(2014) 6 SCC 434] and a Division Bench of this Court in Rajagopal v. Jomy Xavier [2010 (3) KLT S.N.3 (C. No 4)]. The learned counsel also asserts that absolutely no power is vested with the management or any Court to forfeit Gratuity and Employer's contribution to the EPF. It is contended that the Gratuity can be forfeited only to the extent of loss, if any, as borne by Section 4(6)(a) of the Payment of Gratuity Act. By virtue of Section 14 of the said Act, the provisions in the Act are having over-riding effect over other Laws

and Regulations, which aspect has not been properly appreciated by the learned single Judge. Hence the grievance.

8. The learned counsel for the respondent Bank submits that the contentions now raised as to the "so called multiple punishments" in the form of a composite order, vide Ext. P2, is a new contention taken up before this Court, which was never there when the proceedings were finalised before the Labour Court. Since the validity of the domestic enquiry conducted by the Management was held as correct and proper and the said findings were not perverse; the only question to be considered was, whether the interference with the punishment imposed by the management and substituting the same by mere denial of 50% back wages as ordered by the Labour Court invoking the power under Section 11A of the Industrial Act was correct or not. The learned counsel further submits that forfeiture of Gratuity is possible, not only under Section 4(6)(a) of the Gratuity Act as put forth by the learned counsel for the appellant worker, but also under Section 4(6)(b)(i) and (ii). In the instant case, manipulation in the passbooks and loan records/accounts of the customers of the Bank by the worker, who was working as "Clerk-cum-cashier", holding an office of utmost confidence, clearly amounts to "moral turpitude". The appellant was having only eight years' service, who had opted for pension. But since he had no pensionable service, he can only seek for return of his contribution, as per the relevant Rules/Regulations. Minimum qualifying service for getting pension was "10 years" and by virtue of the mandate under the above Regulations, a person terminated from service was not eligible for pension. The learned counsel points out that, "six" witnesses were examined by the management before the Enquiry Officer and several documents were produced. It was on the basis of actual facts and figures brought in evidence, that a finding on guilt was rendered; followed by the punishment imposed upon the appellant. Scope of interference, invoking the power under Section 11A of the I.D. Act is very limited, more so, in view of the nature of duties attached to the post of "Clerk-cum-Cashier", with whom utmost confidence is reposed. Reliance is placed on the verdict passed by the Supreme Court on the decisions rendered in *Federal Bank v. Sreekantan* [2009 (3) KLT SN 29 (Case No. 27)], *Syndicate Bank v. Syndicate Bank Employees Union* [2011 (2) KLT 811], *Mahindra and Mahindra Ltd. v. N.B. Naravade* [2005 (2) KLT 32 (SC) = (AIR 2005 SC 1993)] and *M.P. Electricity Board v. Jagdish Chandra Sharma* [(2005) 3 SCC 401]. The meaning of the term "moral turpitude" is stated as very wider, which is sought to be explained with reference to the binding precedents. The learned counsel submits that "honesty and confidence" reposed upon an employee like the appellant, is of the highest quotient as made clear by the Apex Court in *Union Bank of India v. Vishwa Mohan* [(1998) 4 SCC 310], *Chairman and Managing Director, United Commercial Bank and others* [(2003) 4 SCC 364], *State Bank of India and another v. Bela Bagchi and others* [(2005) 7 SCC 435] and *State Bank of India and others v. Ramesh Dinkar Punde* [(2006) 7 SCC 212].

9. There is no dispute with regard to factual sequence and culmination of the disciplinary proceedings, finding the appellant/workman guilty of the two charges

involving fraudulent correction/manipulation of the loan account of customers. The Labour Court, as per Ext. P3 preliminary order, has held that the domestic enquiry was conducted adhering to the principles of natural justice. The finding arrived at by the Labour Court as per Ext. P4 Award was that the concerned charges levelled against the appellant workman had been proved and that the finding in the enquiry was never perverse. This being the position, the only remaining question was, whether it was a fit case to have invoked the power under section 11A of the Industrial Disputes Act, to interfere with the punishment of dismissal awarded by the management Bank and to order reinstatement with 50% back wages, virtually treating the left over 50% back wages as if it were the appropriate punishment.

10. The main points arising for consideration are:

(i) Whether the course pursued by the Labour Court invoking the power under Section 11A of the I.D. Act, virtually modifying the punishment of dismissal of the Bank employee (after arriving at a finding on guilt as to manipulation of Bank accounts and customers' passbooks) and substituting the same by way of reinstatement with 50% back wages is justified to hold that the punishment of dismissal was shockingly disproportionate with the gravity of the proven misconduct ?

(ii) Whether the plea that the Bank has not suffered any "loss" or that there was no "motive" for the bank employee to have committed the misconduct is germane ?

(iii) Whether the proven misconduct amounts to any act involving "moral turpitude" and whether the forfeiture/denial of Gratuity is justified in law ?

(iv) Whether the denial of the provident fund benefit to the worker is sustainable in the eye of law ?

11. The scope of Section 11A of the I.D. Act was explained by the Apex Court in the celebrated decision in *Workmen v. Firestone Tyre and Rubber Co. of India (P) Ltd.* [(1973) 1 SCC 813]. By virtue of the power under the said provision and the law declared by the Apex Court, it is possible for the Labour Court to interfere with the punishment, if it is unduly harsh and quite disproportionate to the gravity of the proven misconduct. But it is also settled law, that the said power cannot be invoked quite casually, as a matter of course. In so far as the appellant was employed as a "Clerk-cum-cashier" in the respondent Bank, dealing with the public money, utmost confidence was reposed upon the employee and any fraudulent act dealing with the accounts/records/passbooks is a very serious misconduct, which cuts the root of confidence reposed on such employees. In so far as the job of the petitioner is concerned, he was working as the "Clerk-cum-Cashier", dealing with public money, by virtue of which, much confidence was reposed on him. Failure to protect the interest of the Bank and its customers, and manipulation of accounts/registers making wrong entries in the passbooks of the customers reflects the failure to perform duties with utmost

devotion, diligence, integrity and honesty, acting in a manner unbecoming of a Bank employee.

12. As per the law declared by the Supreme Court *Union Bank of India v. Vshwa Mohan* [(1998) 4 SCC 310], in Banking business, absolute devotion, diligence, integrity and honesty need to be preserved by every Bank employee and if it is not observed, the confidence of the public/depositors would be impaired. It was accordingly, that the appeal preferred by the Bank in the said case was allowed, whereby the order of dismissal passed by the disciplinary authority was confirmed.

13. In *Chairman and Managing Director, United Commercial Bank and Others v. P.C. Kakkar* [(2003) 4 SCC 364], the Apex Court reiterated the principles and held that a Bank employee is required to exercise higher standards of honesty and integrity, he being a person dealing with money of the depositors and the customers. It was made clear that, good conduct and discipline are inseparable from the functioning of the every officer/employee of the Bank. If the punishment is shockingly disproportionate, interference is possible to substitute the punishment, but recording of specific reasons for coming to such conclusion is necessary. Mere expression that the "punishment is shockingly disproportionate" would not meet the requirement of law. It was also held by the Apex Court that causing of any loss to the Bank is immaterial.

14. The very same Bench, who passed the above verdict, had occasion to consider the scope of judicial review again, in *Regional Manager, U.P.SRTC, Etawah and others v. Hotilal and another* [(2003) 3 SCC 605], where the Bench observed that, if the charged employee holds a position of trust, where the honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently and misconduct in such cases has to be dealt with iron hands. It was further observed that, where the employee/person deals with public money or is engaged in financial transactions or acts in fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. It was accordingly, that the order of dismissal was restored, holding that the reasoning that proven misconduct had caused only a loss of Rs.16 to the State was immaterial.

15. In *State Bank of India and another v. Bela Bagchi and Others* [(2005) 7 SCC 435], the Apex Court held that any instance of fraud committed by a Bank employee is of serious magnitude. A Bank officer is required to exercise higher standards of honesty and integrity and he deals with money of the depositors and customers. Good conduct and discipline are inseparable from the functioning of the every officer/employee of the Bank and even acting beyond one's authority is a misconduct; by virtue of which, the plea about "absence of loss" is irrelevant. The Apex Court held that, the money was received by the employee from the account holder for depositing it in his Savings Bank account, and if not so deposited, but for making a fraudulent/fictitious credit entry made in the pass book of the account holder, it is a very serious charge. It was accordingly held

that, the contention that the account holder had withdrawn his grievances and no loss was caused to the bank would not hold any merit and that the order of dismissal was to be valid.

16. The power under Section 11A of the I.D. Act is not to be invoked as a matter of course by the Labour Court/Industrial Tribunal, as held by the Apex Court *M.P. Electricity Board v. Jagdish Chandra Sharma* [(2005) 3 SCC 401 (3 member Bench)]. It was held that the Court/Tribunal cannot interfere with quantum of punishment based on irrational/extraneous factors and never on a compassionate ground. The said jurisdiction is never to be exercised capriciously or arbitrarily and a definite finding has to be there, that the punishment of dismissal or discharge was shockingly disproportionate to the gravity of the proven charges. It was also pointed out that, the Industrial Court could not sit in appeal over the decision of the employer as a matter of course, alerting that discipline at workplace is a "sine qua non" for the efficient working of the organization; thus justifying the dismissal of the workman for having assaulted the superior officer at the work place.

17. Another "three member Bench" of the Apex Court had occasion to consider similar circumstance in *Mahindra and Mahindra Ltd. v. N.B. Narawade* [(2005) 3 SCC 134], wherein it was held that dismissal of the workman for using abusive language could not be held to be disproportionate and hence ought not to have invoked the power under Section 11 A of the I.D Act. It was a case where, the workman was dismissed from the service, on proving the charge that he had used abusive and filthy language against the superior officer. The Labour Court, though upheld the finding in the domestic enquiry, interfered with the punishment of dismissal under Section 11A of the I.D. Act and ordered reinstatement with continuity of service and payment of 3rd back wages, denying 3rd back wages alone. The Apex Court made it clear that, the discretion which can be exercised under Section 11A of the I.D. Act is available only on the existence of certain factors like the punishment being so disproportionate to the gravity of the proven charges, so as to disturb the conscience of Court, or existence of any mitigating circumstances which required reduction of the sentence, adding that in the absence of any such factors, the Labour Court cannot, by way of sympathy alone, exercise the said power and reduce the punishment.

18. The scope of the provision ? Section 11A of the ID Act was explained further by the Apex Court in *Hombe Gowda Educational Trust and Another v. State of Karnataka and others* [(2006) 1 SCC 430], which was a case involving indiscipline shown by a Teacher, abusing and assaulting the Principal, though on grave provocation. The Apex Court held that, even on grave provocation, a Teacher is not expected to abuse the head of the institution in filthy language or assaulting him and the fact that no disciplinary proceedings were initiated against the Principal would not be a relevant factor to impose appropriate punishment upon the delinquent Teacher. It was accordingly held that, the

punishment of dismissal of the Teacher could not be said to be wholly disproportionate, so as to shock one's conscience, adding that the discretionary jurisdiction to interfere with the quantum of punishment can be exercised only when it is found that no reasonable person would inflict such punishment or when relevant facts which would have a "direct bearing" on the question, have not been taken into consideration.

19. The deeds/misdeeds committed by a Bank employee, pursuing fraudulent course of action, were considered by the Apex Court in yet another case reported in (2006) 7 SCC 212 [State Bank of India and Others v. Ramesh Dinkar Punde]. It was a case where, the penalty of removal inflicted upon the employee was set aside by the High Court of Mumbai, with a direction to the appellant Bank to reinstate the employee with all consequential benefits, including back wages. The Apex Court deprecated the course pursued by the High Court acting as an appellate authority and held that it was impermissible for the High Court to re-appreciate the evidence, which was considered by the Enquiry Officer, Disciplinary Authority and the Appellate Authority. The Apex Court held that the concerned employee (a Bank officer) was holding a "position of trust", where honesty and integrity were inbuilt requirements of functioning and that it would not be proper to deal with the matter leniently. It was added that, in Banking business, absolute devotion, diligence, integrity and honesty needed to be preserved by every Bank employee, so that confidence of the public/depositors was not impaired.

20. The exceptional circumstances under which the discretionary power of the Labour Court under Section 11A of the I.D. Act could be invoked were explained by the Apex Court in Davalsab Hussainsab Mulla v. North West Karnataka Road Transport Corporation [(2013) 10 SCC 185] as well. It was a case where, a driver of the respondent Corporation had abused the Checking Inspector of the Corporation in filthy language and had also threatened to do away with his life. On denying the charges, an enquiry was conducted, whereby the delinquent employee was found guilty and was ultimately dismissed from service. The finding was upheld by the Labour Court and refused to invoke the power under Section 11 A of the I.D. Act. But the Award was set aside by a learned single Judge of the High Court concerned, modifying the order of dismissal, by withholding two increments with cumulative effect, without consequential benefits and back wages, but with continuity of service. The Division Bench of the High Court however set aside the verdict of the learned single Judge and restored the order of dismissal. The verdict passed by the Division Bench was upheld by the Apex Court, holding that the discretionary power of the Labour under Section 11A of the I.D. Act was always to be made judicially and judiciously and that high amount of care and caution should be exercised, depending upon the facts and circumstances of each case. The Apex Court also alerted that, misplaced sympathy will cause more harm to the establishment, which provides source of livelihood to many number of employees, than any good for the employee concerned.

21. The legal position was considered by this Court as well in *Syndicate Bank v. Syndicate Bank Employees Union* [2011 (4) KLT 811] [by one of us (PRRM-J) sitting single] and placing reliance on the various verdicts passed by the Apex Court and this Court, it has been categorically held that interference cannot be made under Section 11 A of the I.D. Act as a matter of course. It is only a strange coincidence, that the learned counsel appearing for the appellant in the instant case was appearing for the petitioner Bank in the case, whereas the learned counsel appearing for the Bank herein was appearing for the respondent Union.

22. The learned counsel for the appellant sought to rely on the verdicts passed by the Supreme Court *Harjinder Singh v. Punjab State Warehousing Corporation* [(2010) 3 SCC 192], *Iswar Lal Mohan Lal Thakkar v. Paschim Gujarat Vij Company Limited and another* [(2014) 6 SCC 434] and *Collector Singh v. L.M.L. Limited, Kanpur* [(2015) 2 SCC 410] to contend that power of the High Court to interfere with the awards passed by the Labour Court or Industrial Tribunal is very limited, which cannot be exercised, as if it were an appeal and hence that the verdict passed by the learned single judge is liable to be interfered. In (2010) 3 SCC 192 (cited supra) the Bench made clear that the parameters laid down by the Apex Court for exercise of the jurisdiction by the High Court under Articles 226/227 of the Constitution were not given effect to. The position was reiterated by the Supreme Court in (2014) 6 SCC 434 (cited supra) holding that interference will be called for only in the cases of error of jurisdiction or serious error apparent on the face of records or if the judgment is not based on evidence. Similarly, in (2015) 2 SCC 410 (cited supra) it has been made clear that unless the punishment imposed is found to be outrageously disproportionate to the gravity of misconduct, interference is not possible. There is no dispute with regard to this legal proposition. The above verdicts have to be understood in the light of the facts and circumstances as dealt with in each case; which however does not come to the rescue of the appellant. The instances of the misconduct in those cases were never with reference to any fraudulent action involving manipulation of registers of the Bank or pass books of the customers. On the other hand, the course to be followed under such circumstance, considering the nature of employment of a Bank employee, it has been held by the Apex Court in the decisions cited supra, that such action has to be dealt with by iron hands and that no misplaced sympathy can be extended under any circumstances.

23. As mentioned already, and as discernible from paragraph 7 of Ext. P4 Award, justification for invoking the power under Section 11A of the I.D. Act is sought to be made by the Labour Court observing that the worker was not having any past bad record; that there was no case for the management that the worker had made any illegal profit; that the management had no case that they had lost confidence in the worker or that they had suffered any substantial loss. On going through the facts and figures, it cannot but be held that the said observation is not correct, on facts and also with regard to the legal position declared by the Apex Court. With regard to the past record of the workman, it is immaterial in

cases with serious charges of fraudulent acts involving manipulation of records; which is more so in the case of a "Bank employee", who has effected unauthorised alterations/manipulations in the loan account of the customers also making fraudulent credit entries. In Banking institutions, every employee requires to maintain utmost devotion, diligence, honesty, integrity and sincerity, in view of the nature transactions and the public money involved.

24. With regard to the observation made by the Labour Court that the management had no case that they had lost confidence in the worker, paragraph 8 of Ext. P1 preliminary order/notice proposing the punishment is relevant, which reads as follows :

"In view of the reasons given above and based on the findings of the Enquiry officer, I hold the view that all the charges against the CSE have been proved conclusively and beyond reasonable doubts. The charges levelled against the CSE and proved in the Enquiry are of the very serious nature. The misconduct, of the CSE is not a single act of aberration at a weak moment, but a series of calculated and deliberate fraudulent manipulations have been committed. These acts of misconduct on the part of the CSE establish that no trust, which is the most integral requirement on the part of the Bank employee, could be reposed in him. Thus the CSE has proved himself unfit to be retained in the service of the Bank any more. The charges proved against the CSE constitute gross misconduct and minor misconduct under the clauses of the First Bipartite Settlement, 1966 dated 19.10.1966 (as modified by the Sixth Bipartite Settlement dated 14.2.1995). As such, I am of the considered view that the ends of justice would be adequately met only if the CSE is given a punishment commensurate with the proven guilt of the grave misconduct he has committed.

Accordingly, I propose to impose on the CSE the punishment of "dismissal without notice" from the service of the Bank. I also order that gratuity and Bank's contribution, if any, to Provident Fund shall be forfeited and will be appropriated towards any amount due to the Bank from the CSE and an amount of Rs. 3000/- (Rupees Three thousand only) will also be manipulations committed by the CSE. It is further ordered that for the suspension period, no further salary or any amount by way of any other benefit shall be payable by Bank apart from the subsistence allowance already paid."

25. Similarly, specific averment has been made by the Bank in paragraph 5 of Ext. P2 final order as well, to the following effect:

" I find that the CSE has not put forth any additional facts or reasons during the personal hearing, the CSE had with the undersigned. The gravity of the misconduct which strikes at the very foundation of strong office of confidence upon which the institution is built, warrants a severe punishment commensurate with the guilt. The grounds urged by the CSE are not at all worthwhile to take any kind of lenient view of the matter. Therefore, I confirm the punishment already proposed in the preliminary order, and impose on the CSE the

punishment vide Clause 19.6(a) of the First Bipartite Settlement 1966 dated 19.10.1966 (as modified by the Sixth Bipartite Settlement dated 14.02.1995). Accordingly, I impose on the CSE a composite single consolidated penalty in respect of all the proven charges by way of the punishment of dismissal without notice from the service of the Bank with effect from the date of this order. I also order that the Gratuity and Bank's contribution, if any, to Provident Fund shall be forfeited and will be appropriated towards any amount due to the Bank from the CSE. An amount of Rs. 3000/- (Rupees Three thousand only) will also be recovered on account of the loss caused by the fraudulent manipulations committed by the CSE. It is further ordered that for the suspension period, no further salary or any amount by way of any other benefit shall be payable by the bank apart from the subsistence allowance already paid. The period of suspension will not be reckoned for any other purposes including terminal benefits, if any.

26. From the above, it is clear that the loss of confidence of the management Bank in the worker is specifically spelt out to inflict the punishment of dismissal. Even otherwise, loss of confidence under such circumstances has to be inferred, in view of the nature of duty cast upon the workman employed as "Clerk-cum-Cashier" in a Bank. This is more so, in view of the ruling rendered by the Apex Court reported in AIR 1971 SC 2414 [M/s Francis Klein and Co. Private Limited v. The Workmen and another]; (2003) II LLJ 267 = (2003) 3 SCC 605 [Regional Manager, U.P. SRTC, Etawah and others v. Hotilal and another] and (2005) 3 SCC 254 [Divisional Controller, KSRTC (NWKRTC) and A.T. Mane]. The reason that the workman has "no past bad record", is immaterial in cases involving serious charges of fraudulent acts committed by him and the finding to the contrary made by the Labour Court is totally alien to the dictum laid down by the Supreme Court in Janatha Bazar (South Kanara Central Co.op Wholesale Stores Ltd.) v. Secy. Sahakari Noukarana Sangha [(2000) 7 SCC 517]. The appellant/workman was a person dealing with public money, acting in fiduciary capacity, where highest degree of integrity and trustworthiness is essential.

27. Equally wrong is the observation of the Labour Court in paragraph 6 of Ext. P4 award, that the management had no case that by committing misconduct the worker had not made illegal profit. Such requirement is immaterial in the cases involving fraudulent accounts/manipulation of accounts of customers of the Bank. The "motive" of the worker is irrelevant under such circumstances and "proof of loss" is not at all a relevant factor as held by the Apex Court in Disciplinary Authority?cum?Regional Manager and Ors. v. Nikunja Bihari Parnaik [(1996) II LLJ 379]. It cannot be a matter of dispute; that an employee working in a Banking institution is supposed to maintain high degree and standard of honesty, integrity and devotion to duty, particularly when he is functioning as a "Clerk-cum-Cashier" who is entrusted with funds and is supposed to deal with money of the customers, as made clear by the Apex Court.

28. As mentioned already, it has been contended before this Court that the

appellant has not been benefited in any manner in having committed the act, nor is there any "loss" caused to the management Bank and that, there is no "motive" as well. With regard to the aspect whether occurrence of loss to the management/Bank is necessary or not, the position stands answered by the Apex Court in the decisions reported in (2003) 4 SCC 364 (cited above) (2003) 3 SCC 605 (cited above) and (2005) 7 SCC 435 (cited above) to the effect that aspect of having resulted no loss is immaterial in deciding the misconduct. Nor could it be a ground to extend any sympathy to the worker. The proven misconduct of the nature as involved in the present case committed by a Bank employee, tampering with the registers of the Bank and pass books of the customers, is a very serious misconduct compromising with the confidence reposed upon him by the employer. It is of serious magnitude and such activities have to be dealt with iron hands, as made clear by the Apex Court. In no case has it been held that "motive" would be a governing factor in deciding the issue; particularly, invoking the power under section 11A of the I.D Act. Even in criminal cases, motive, if established, can only form one of the different links, to connect them together to form a chain and to arrive at the culpability. In the case of disciplinary proceedings, unlike criminal proceedings, "proof beyond reasonable doubt" is not necessary, where "preponderance of the probability" is sufficient to fix the guilt.

29. The issue/contention with reference to "motive" can be considered in different angle as well. Let us take the case of a Nurse, administering "intravenous injection", which ought to have been administered "intramuscular", causing instantaneous death of the patient. There is no motive, but if the misconduct is proved it requires serious punishment. Similarly, when a Station Master of a Railway station gives green signal to an oncoming train without noting existence of another train in the same track, thus resulting in collision, there may not be any motive, but the misconduct is serious. Let us take the case of a Sentry, who sleeps while on duty at his post, permitting the enemy force/insurgents to enter into the territory of this country causing serious loss/damage. Here also, there is no motive, but the misconduct is very serious, which warrants maximum punishment. The appellant, having been appointed as a Clerk-cum-Cashier in a Bank, was dealing with the money of the Bank and the customers, who had to maintain utmost honesty and integrity in all respects and as such, the proven manipulation of records/registers/passbooks, even it had not resulted in any loss to the Bank or that he had no particular interest or motive in committing the act, cannot be dealt with lightly, to mitigate the rigour of punishment. We also find support from the ruling rendered by the Division Bench of this Court in *State of Kerala v. Sreedharan Nair* [2012 (2) KLT 915] (paragraph 21) [authored by one of us (PRRM-J) as a member]. In the above circumstances, this Court finds that the punishment of dismissal ordered by the learned single Judge, setting aside Ext. P4 Award passed by the Labour Court, is perfectly within the four walls of the law.

30. The next point to be considered is, whether there is any justification for

denying the "Gratuity" and "Provident Fund Contribution". Gratuity is payable as per the Payment of Gratuity Act, 1972 and the payment has to be effected in terms of Section 4 of the Act. The circumstances under which Gratuity can be denied are dealt with under Section 4 (6) of the Act, which is reproduced below:

"4(6) Notwithstanding anything contained in sub-section (1)

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited] -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude provided that such offence is committed him in the course of his employment.

From the above, it is quite clear that, if the misconduct committed by the employee is one involving "moral turpitude", Gratuity can be denied to him. As such, the question is whether the proven misconduct in the instant case is one involving moral turpitude ?.

31. The meaning of the term "moral turpitude" as given in the Blacks Law Dictionary (8th End. 2004) is as follows:

"Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offences involving moral turpitude ? such as fraud or breach of trust.... Also termed moral depravity

"Moral turpitude means, in general, shameful wickedness ? so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people"

The instance of a misconduct amounting to "moral turpitude" may differ from case to case. "Moral turpitude" is an exception used to describe a context which is inherently vile, depraved or having any connection showing depravity. The term, by its very nature, is some what nebulous, since it involves scrutiny of an action in the light of the prevailing moral norms. As made clear by a Constitution Bench of the Apex Court in AIR 1963 SC 1313 [In the matter of Mr. "P" an Advocate] any conduct which makes a person unworthy to be entrusted with a responsible task must be regarded as a conduct involving "moral turpitude". It was a case involving misconduct/professional misconduct of a lawyer. The Apex Court observed that the expression "moral turpitude or delinquency" is never to

receive a narrow construction.

32. The expression "moral turpitude" was explained by the Allahabad High Court in *Baleshwar Singh v. District Magistrate and Collector* (AIR 1959 All 71); relevant portion of which is extracted below;

"The expression "moral turpitude" is not defined anywhere. But means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

33. The Apex Court had occasion to consider the scope of the term "moral turpitude" in *Pawan Kumar v. State of Haryana* [(1996) 4 SCC 17]. Later, in *Allahabad Bank and another v. Deepak Kumar Bhola* [(1997) 4 SCC 1], the Apex Court held that the offence involving "moral turpitude" depends upon the facts and circumstances of each case. It was categorically made clear that, one of the most serious offences involving "moral turpitude" would be, where a person employed in a Banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw. The decisions rendered by the Supreme Court in the *Pawan Kumar*'s case (cited supra) and that of the Allahabad High Court in *Baleshwar Singh*'s (cited supra) were referred to and the meaning of the expression "moral turpitude" was explained therein.

34. The Apex Court considered the meaning of the term "moral turpitude" again, in so far as it related to the deeds/misdeeds committed by a Bank employee in *Sushil Kumar Singhal v. Regional Manager, Punjab National Bank* [(2010) 8 SCC 573]. The Court held that the term "moral turpitude" means anything contrary to honesty, modesty or good morals and it needs vileness and depravity. The finding of the Industrial Tribunal [that the dismissal of the concerned Bank employee on not depositing the amount given to him in the post office towards telephone bill as involving "moral turpitude"] was justified and the dismissal of the writ petition by the High Court was affirmed by the Supreme Court.

35. From the above, it is quite evident that the proven misconduct committed by the appellant, tampering with the registers of the Bank and Passbooks of the customers, is an instance contrary to honesty and good morals, which is quite unbecoming of a Bank employee who was working as a Clerk-cum-Cashier. This is more so, when the appellant is an "Ex-service man" and was a member of the disciplined force of the country, by virtue of which a much higher level of

integrity, honesty and good morals were expected of him. This being the position, it is an instance involving "moral turpitude" and the action on the part of the management Bank in forfeiting Gratuity is perfectly justified, being in conformity with the statutory provision i.e. under Section 4(6)(b)(ii) of the Payment of Gratuity Act 1972.

36. The remaining point is, whether the denial of Provident fund contribution is correct or not. The element of provident fund consists of contribution of the employees as well as the contribution of the employer. In so far as the service in the respondent Bank is concerned, what is denied as per Ext. P2 order is only the contribution effected by the employer Bank, which means there is no denial of the provident fund contribution effected by the appellant employee. But regarding the question whether such a step could have been pursued by the employer Bank, it has to be borne in mind that the contributions are having statutory effect, and in so far as the employee continued in service, the contribution was liable to be effected both by the "Employer" and the "Employee" to the requisite extent. No specific reference to any provision of law has been made by the learned counsel appearing for the Bank to justify the denial of the provident fund contribution made by the respondent Bank in connection with the service rendered by the appellant. It is submitted across the Bar, that steps will be taken by the Bank to cause disbursement of the provident fund contribution as well. We cannot but make a finding that the action of the respondent Bank as per Ext.P2 order in forfeiting the provident fund contribution effected by the Bank is bad in law and the same stands set aside. If the said amount has not released to the appellant employee till date, it shall be released forthwith, at any rate, within one month from the date of receipt of a copy of this judgment.

37. In view of the above facts and circumstances, the challenge against the verdict passed by the learned single Judge and against the forfeiture of "Gratuity" stands repelled. The appeal is partly allowed, in so far as the amount payable towards the "Provident Fund contribution" is concerned, as observed above.