

(2002) 06 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1354 of 2000

Corporation Bank and Others

APPELLANT

Vs

N.V. Subba Rao

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311

Citation : (2002) 06 AP CK 0014

Hon'ble Judges : S.R.K. Prasad, J; S.R. Nayak, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; V.S.R. Anjaneyulu, for the Respondent

Judgement

S.R. Nayak, J.—The Management of the Corporation Bank and its authorities, being aggrieved by the order of the learned single Judge dated 18.9.2000 in W.P.No.2308 of 1999, have preferred this Writ Appeal. This Writ Appeal has had a long drawn history. Therefore, it is appropriate to state the background facts briefly leading to the filing of this Writ Appeal in the first instance. They are as follows :

2. The respondent in this Writ Appeal viz., Mr. N.V. Subba Rao was initially appointed as a Clerk in the service of the bank on 6.6.1977 at Staff Training College, Mangalore and subsequently he was transferred to Nizamabad and Ookal haveli branches where he worked as a clerk up to 18.1.1984. He was promoted as an officer of the bank with effect from 10.12.1983 and he was transferred to Vijayawada, Main Branch. He joined as an officer at Vijayawada on 20.1.1984 and subsequently he was transferred from Vijayawada to Guntur Regional Office on 3.2.1985. When the respondent was working at Regional Office, Guntur, the Deputy General Manager, Human Resources Department, Mangalore, who is the Disciplinary Authority, passed an order keeping the respondent under suspension in exercise of the powers vested conferred upon him by Regulation 12(1)(B) of the Corporation Bank Officer Employees (Discipline

and Appeal) Regulations, 1982, through his proceedings bearing HRD/IRD/1216/85, dated 3.7.1983. Subsequently, the disciplinary authority issued proceedings bearing No. HRD/ DISC/ 2266/86, dated 22.9.1986 framing the following charges :

1. That, the Officer, while functioning as Cashier-cum-Clerk, Ooka Haveli Branch in Warangal District during the year 1981-84 applied for a vehicle loan and an amount of Rs.5500/- was drawn under the head HPL 1/83 and relevant entries were made in the Scroll as well as in the Teller's Cash Book. Sri N.V. Subba Rao, subsequently made false entries in the books of account of the Bank in respect of a fictitious loan for Rs.5500/- sanctioned in favour of Sri K. Bapu Rao, a Tea Vendor who supplies tea to the Bank Employees and Shri NV. Subba Rao himself cleared the said loan of Rs.5500/- on 1.12.1983.

2. That, the Officer while working in the aforesaid capacity (Cashier-cum-Clerk) at the Bank's Ookal Haveli Branch clandestinely removed gold bangles worth Rs.6000/- pledged with the Bank by one Sri D. Rayappa Reddy while availing the jewel loan and replaced them with spurious gold bangles and further attempted to dispose off the said gold bangles during December 1983 and in that connection contacted Shri Rajamouli, the Gold Appraiser on the Bank..

3. The respondent submitted his reply to the charge-memo on 1.10.1986 denying the charges levelled against him. Not being satisfied with the reply of the respondent, the disciplinary authority conducted the enquiry by appointing an Enquiry Officer and ultimately the respondent was dismissed from service on 28.7.1988 as a disciplinary measure. The departmental appeal preferred by the respondent was also dismissed by an order dated 2.1.1989. The respondent, being aggrieved by the disciplinary action, filed W.P.No.2644 of 1989 in this Court. This Court having opined that the finding recorded in respect of the Charge No.2 is perverse, set aside the disciplinary action and remanded the proceedings by its order dated 30.12.1991 with a direction to the appellate authority to pass appropriate order. However, the Court held that the finding recorded on Charge No.1 is valid. In that view of the matter, both the respondent and the Management filed Writ Appeal Nos.945 of 1994 and 1064 of 1992 respectively against the order of the learned single Judge dated 30.12.1991. However, in pursuance of the orders passed by the learned single Judge on 30.12.1991 in W.P.No.2644 of 1989, the matter was reconsidered and the disciplinary authority passed an order on 9.4.1992 again dismissing the respondent from service as a disciplinary measure. The appeal filed against the said order was also dismissed by the appellate authority by order dated 25.8.1992. The respondent being aggrieved by the orders of the disciplinary authority and the appellate authority again filed another W.P.No.12101 of 1992. Since Writ Appeal Nos.1064 of 1992, 945 of 1994 and W.P.No.12101 of 1992 relate to the disciplinary action taken against the respondent on the alleged misconduct, they were clubbed and they were being heard together. When these two writ appeals and writ petition were posted before the Division Bench on

14.8.1996 for final hearing, after hearing the arguments of the learned counsel for the respondent, the Division Bench adjourned the case for further hearing for the reasons stated in its order dated 14.8.1996. It reads as follows :

"After hearing the arguments of Sri S. Venkat Reddy, learned Senior Counsel, and when Sri K. Srinivasa Murthy has commenced his arguments a suggestion came, whether there is a possibility for the Appellate Authority to reconsider the penalty imposed on the delinquent officer. Two types of penalties are suggestively mentioned namely (1) reverting the appellant delinquent officer to the lower post as clerk; or (2) imposing the penalty of suspension for a period of one year as a substantive penalty. The latter one, the appellant-delinquent officer is agreeable. Sri Srinivasa Murthy, learned counsel seeks time to put to his clients, whether they are willing at all for reconsideration and, if so, the nature of the penalty they propose to award on such reconsideration."

4. Subsequently, the Division Bench by its order dated 27.9.1996 closed Writ Appeals 945 of 1994, 1064 of 1992 and W.P.No.12101 of 1992. The order reads as follows :

"We may mention that on the last occasion, while hearing the arguments, or suggestion came from us whether the Management would be willing to review their Bhund and revert the petitioner to the lower post of clerk, whereupon adjournment was sought on behalf of the Corporation Bank to find out the views of the Management.

Sri K. Srinivasa Murthy, learned Counsel for the Corporation Bank says that the Management has decided to revert the petitioner to the lower post of clerk by revising the impugned order. The counsel for the petitioner says that his client is agreeable to accept the punishment of reversion to the lower post.

We are, therefore, of the view that there is no need to decide the cases on merits and accordingly the same are closed. No costs."

5. After the disposal of the writ appeals and the writ petition, the General Manager of the Corporation Bank issued proceedings dated 31.1.1997 directing -

"The petitioner be reinstated in the services of the Bank as clerk at the basic pay corresponding to the stage of basic pay he was drawing just before his promotion to officers cadre. The period of suspension and the period between the date of dismissal and the date of reinstatement will not be reckoned for any purpose, including pay and allowance, increment, qualifying service for pension or any other service benefits, whatsoever. The pay and allowances for the period of suspension is restricted to the subsistence allowance admissible to the petitioner during the period of suspension.

The reinstatement of the petitioner in the services of the Bank will be effective from the date he reports for duty in terms of this proceedings and the consequent order to be issued by the Personnel Administration Division, HO, Mangalore. The next annual increment of the petitioner be released after

completion of one year of service from the effective date of his reinstatement and the anniversary date of his increment also be changed accordingly.

The Personnel Administration Division, HO, Mangalore is directed to issue orders reinstating the petitioner in service, specifying his Basic Pay and service conditions as stated above, and also the fresh place of posting.

A copy of this proceedings be forwarded to the petitioner.

A copy each of this proceedings also be forwarded to the Regional Office, Hyderabad and Personnel Administration Division, HO, Mangalore for necessary action."

6. In pursuance of the proceedings of the General Manager dated 31.1.1997, the Chief Manager, Corporation Bank, Head Office issued an office order bearing No.PAD:MPDS:336:97, dated 6.2.1997 reinstating the respondent into service of the bank as clerk and posting him to the Currency Chest, Guntur, subject to certain terms and conditions set out in that order. The office order of the Chief Manager dated 6.2.1997 reads as follows:

"Ref : No.PAD:MPDS:336:97 6.2.1997

PERSONNEL ADMINISTRATION DIVISION

Sri N.V. Subba Rao, C/o Sri P. Mallikarjuna Rao, 5th line, A.T. Agrapharam, Guntur - 522 004

Dear Sir,

Please refer to the proceedings dated 31.1.1997 of the General Manager, forwarded to you vide our letter No.PAD/IRW/DISC/248/97, dated 31.1.1997 wherein you were informed that pursuant to the orders of the Honourable High Court of Andhra Pradesh, it has been decided to reinstate you in the services of the Bank as Clerk at the stage of Basic Pay which you were drawing as Clerk at the time of your promotion to the officers cadre. Accordingly you are posted to our Currency Chest, Guntur at the following address to work there as clerk until further orders.

Corporation Bank, Currency Chest, Ground Floor, TVS Building, Trunk Road, Guntur - 522 004

7. The terms and conditions of your reinstatement are set out hereunder :

1. You will draw a Basic Pay of Rs.2,920/- per month (in the revised scale) applicable to clerical cadre from the date of your joining duty. You will be eligible for all allowances as applicable to clerical cadre at the place of your posting as per the provisions of the settlement/awards of the Bank in force from time to time.

2. The period of suspension and the period between the date of dismissal and the date of reinstatement will not be reckoned for any purpose, including pay and

allowance, increment qualifying service for pension or any other service benefits, whatsoever. The pay and allowance, for the period of suspension are restricted to the subsistence allowance admissible to you during the period of suspension.

3. You will draw the next increment on the anniversary date of your reporting for duty in terms of this order.

You are advised to join duty at the new station immediately under intimation to us.

At the time of joining duty you should execute a service agreement on non-judicial stamp paper of requisite value and produce three copies of your recent passport size but photographs duly signed across the same."

8. The respondent accordingly joined the service as clerk at Currency Chest, Guntur on 17.2.1997. After joining, the respondent submitted a representation to the General Manager dated 10.3.1997 contesting the correctness of the statements made in the proceedings of the General Manager dated 31.1.1997 and the office order of the Chief Manager dated 6.2.1997 as to what transpired in the Court when Writ Appeal Nos.945 of 1994, 1064 of 1992 and W.P.No.12101 of 1992 were heard and also putting forth certain claims, such as, that the suspension period from 8.7.1985 to 3.7.1988 should be reckoned for pension and gratuity and he is entitled to the salaries with annual increments from the date of dismissal to the date of reinstatement besides treating the said period as on duty etc. The above representation was followed by reminders of the respondent dated 22.1.1998 and 20.10.1998. The Assistant General Manager, Personnel Administration Division (Industrial Relations Wing) replied to the respondent on 5.11.1998 informing the respondent that the bank's management was not in a position to accede to the request of the respondent to extend the benefits sought by him in his representation dated 10.3.1997. The petitioner, being aggrieved by the letter of the Assistant General Manager dated 5.11.1998 and the earlier proceedings of the General Manager dated 31.1.1997, filed W.P.No.2308 of 1999 praying for the following relief :

"Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate, writ, order or direction more particularly one in the nature of writ of Mandamus declaring the proceedings bearing Ref. No. PAD: IRW: DISC: 248:97, dated 31.1.1997 and the proceedings bearing No. Ref. No. PAD /I RL/ DISC/ 2027/98, dated 5.11.1998 issued by the respondents so far as it went against the interest of the petitioner as illegal and ultra vires to the provisions of Article 14 of the Constitution of India directing to pay all the reasonable benefits which are clearly shown in the annexure filed along with this W.P."

9. We have heard Sri K. Srinivasa Murthy, learned Senior Standing Counsel for the Corporation Bank and Sri V.S.R. Anjaneyulu, learned counsel for the respondent.

10. Sri K. Srinivasa Murthy, firstly contended that the writ petition filed by the respondent is not maintainable. Elaborating this contention, the learned Standing Counsel would point out that the respondent has not pleaded any statutory violation or violation of law. The respondent has also not pointed out violation of any of his legal rights by the impugned action of the management of the Corporation Bank. Sri Srinivasa Murthy next contended that the relief sought by the respondent to grant "all reasonable reliefs" is totally imprecise and it is as vague as it could be and on that count also, the writ petition should have been dismissed in limine. Sri Srinivasa Murthy further contended that if the conditions of reversion are not in accordance with the agreement reached between the parties before the Division Bench, the respondent without any loss of time should have sought review of the order of the Division Bench or sought clarification as to the terms and conditions on which the respondent had agreed for reversion of the respondent to the post of clerk, and, since the respondent, for the reasons best known to him, did not avail such lawful course of action before the very Division Bench which closed the writ appeals and the writ petition, he now cannot make complaint and assert that he is entitled to better reliefs than the ones granted by the management of the Corporation Bank. Sri Srinivasa Murthy further contended that the learned single Judge has granted the reliefs to the petitioner which could not be deduced from the order of the Division Bench or the so-called understanding between the parties in reducing the penalty from dismissal to reversion and, therefore, the learned single Judge has exceeded his jurisdiction in granting the reliefs. Lastly, Sri Srinivasa Murthy contended that the present writ petition is filed by the respondent as if it is an execution petition to implement the order of the Division Bench dated 27.9.1996 and, therefore, on that count also, the writ petition should have been dismissed.

11. Sri V.S.R. Anjaneyulu, while supporting the judgment of the learned single Judge, would maintain that the reliefs granted to the petitioner by the learned single Judge are in consonance with law, equity and also in accordance with the understanding reached between the parties at the time of hearing of Writ Appeal Nos.945 of 1994, 1064 of 1992 and W.P.No.12101 of 1992. Sri V.S.R. Anjaneyulu would maintain that the reliefs granted by the learned single Judge are the minimum reliefs to which the respondent in law is entitled to and, therefore, no case is made out by the Management of the Corporation Bank to interfere with the discretionary order made by the learned single Judge. Sri V.S.R. Anjaneyulu, also contended that the bank's management ought to have heard the respondent-employee before issuing the impugned proceeding dated 31.1.1997 imposing the two conditions for reinstating him into the clerical cadre and, therefore, there is violation of principles of natural justice and fair play in action. Sri V.S.R. Anjaneyulu, in support of this contention places reliance on the judgment of the Supreme Court *Manzoor Ahmed Mazumdar v. State of Meghalaya*, (1997) 11 SCC 374.

12. Essentially the controversy between the parties hover around as to what transpired before the Division Bench and what are the terms and conditions

subject to which the management of the Corporation Bank had agreed to review the earlier order passed by the disciplinary authority dated 9.4.1992 dismissing the respondent from service, and the terms and conditions subject to which the respondent officer agreed to suffer the penalty of reversion in place of the earlier penalty of dismissal from service. No doubt in Writ Appeal Nos.945 of 1994, 1064 of 1992 and W.P.No.12101 of 1992, the validity of the disciplinary action taken by the management of the Corporation on 28.7.1988 and subsequently on 9.4.1992 was in question. The respondent-officer, in his wisdom and in exercise of his freedom, did not press his Writ Appeal No.945 of 1994 and Writ Petition No.12101 of 1992, and on the other hand, he opted for lesser penalty of reversion in place of dismissal. There is no controversy that the respondent-officer, admittedly, agreed to suffer the punishment of reversion from the post of officer to the post of clerk as a disciplinary measure. But, the respondent-officer seriously contests the correctness of the statement of the management of the bank, as to what transpired in the Court and contends that the learned counsel for the bank did not inform the Division Bench on 27.9.1996 that the respondent would be reinstated into service as clerk at the stage of basic pay the respondent was drawing just before his promotion to the officer cadre. According to the respondent-officer, the learned Standing Counsel for the Bank merely submitted before the Division Bench on that day that the bank's management had decided to reinstate the respondent into service reverting him from the post of officer to the lower post of clerk. However, according to the bank, on 14.8.1996, after hearing the arguments of the learned counsel for the respondent, a suggestion came from the Division Bench to explore the possibilities of reinstating the respondent into service and the two options suggested by the Court were -

(a) Reverting the petitioner from the officer cadre to clerical cadre as punishment and of course during the period of suspension, he will not be getting any additional pay than subsistence allowance which he has drawn and the petitioner will not be entitled for increments for the period of suspension. (OR)

(b) Treating the entire period of suspension as if he was not on duty and further suspension as punishment for one year. Both the above suggestions were discussed in detail by the Bank. Having regard to the suggestions of the Hon''ble Court in para (a) supra, the Bank agreed to reinstate the petitioner as clerk at the stage of basic pay he was drawing just before his promotion to officer cadre. The decision of the Bank was conveyed to the Hon''ble Court by the Bank's Counsel Sri K. Srinivasa Murthy. Accordingly, the Hon''ble High Court disposed of the W.P.No.12101 of 1992 vide its order dated 27.9.1996.

13. Of course the order made by the Division Bench on 14.8.1996 speaks about two types of penalties suggested for the consideration of the Management of the Bank. They are (i) Reversion of the respondent to the lower post of clerk; (ii) Imposition of penalty of suspension on the respondent-delinquent for a period of one year as a substantive penalty. There is no need for us to consider the alternative penalty-(ii) suggested by the Division Bench, because, ultimately that

is not the penalty imposed on the respondent - delinquent. In the order made by the Division Bench on 27.9.1996 closing the writ appeals and the writ petition, there is no reference to the terms or conditions subject to which the respondent officer would be reverted to the lower post of clerk. The order only records the statement of the learned counsel for the Management that the Management had decided to revert the respondent to the lower post of clerk by revising the impugned order dated 9.4.1992. The order also records the submission of the learned counsel for the respondent that the proposal of the Management to revert the respondent to the lower post of clerk is acceptable to him. The order made by the Division Bench on 27.9.1996 was followed by the proceeding of the General Manager dated 31.1.1997. In that proceeding, there is a specific reference as to the two alternative suggestions made by the Division Bench to reinstate the respondent into service of the Bank. In the consequential office order of the Chief Manager dated 6.2.1997 also, in clear terms, it is stated that the respondent would draw a basic pay of Rs.2920/- per month applicable to clerical cadre from the date of his joining duty, and that he would be eligible for all allowances as applicable to clerical cadre at the place of his posting as per the provisions of the settlement/awards of the Bank in force from time to time. The said office order also specifically states that the period of suspension and the period between the date of dismissal and the date of reinstatement will not be reckoned for any purpose, including pay and allowance, increment, qualifying service for pension or any other service benefits, whatsoever. It also stated that the pay and allowance for the period of suspension are restricted to the subsistence allowance admissible to the respondent during the period of suspension. According to the respondent, he did not agree for reversion to the post of clerk subject to the aforementioned terms and conditions now imposed by the Management in the proceedings of the General Manager dated 31.1.1997 and the office order of the Chief Manager dated 6.2.1997.

14. It is trite that the controversy between the parties is purely a factual controversy and the witness to the incident is no other than learned Judges themselves constituting the Division Bench which heard the writ appeals and writ petitions on 14.8.1996 and 27.9.1996. If the respondent did not agree for the terms and conditions now imposed by the management to reinstate him into service as a clerk by way of reversion in substitution of the earlier penalty of dismissal from service, when he received the copies of the proceedings of the General Manager dated 31.1.1997 and Chief Manager dated 6.2.1997, without any loss of time, he should have protested against the terms and conditions of reversion and moved the very Division Bench before which the suggestions to compromise the dispute between the parties came and writ appeals and writ petition came to be closed on the basis of the settlement of dispute between the parties. For the reasons best known to the respondent, he did not move the Division Bench to review the order made by it on 27.9.1996 in Writ Appeal Nos.945 of 1994, 1064 of 1992 and Writ Petition No.12101 of 1992 and to hear those writ appeals and the writ petition on merit nor he seek clarifications as to

the terms and conditions subject to which the respondent had agreed to suffer the penalty of reversion to the lower post of clerk in substitution of the penalty of dismissal from service. Although the respondent in his letter dated 17.2.1997 addressed to the General Manager, Corporation Bank claimed that he "was not granted the eligible reliefs and benefits" consequent on reversion from the cadre of officer to clerical cadre, and though he stated that he reserves his right to approach the appropriate authorities or forum for redressal of his grievance according to law, he did not approach the Division Bench either for review of the order or for clarifications.

15. It is well settled by the opinions of the Apex Court in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, *APAR (P) Ltd v. Union of India* 1992 Sup (1) SCC 1 and in *State of Maharashtra and others Vs. Admane Anita Moti and others*, that a statement of fact as to what transpired at the hearing, recorded in the judgment of a Court, is conclusive of the facts so stated and no one, including a litigant or his counsel, can contradict such statement by affidavit or evidence and in such situation, the only remedy open to the litigant or his counsel is to bring it to the notice of the very Court which is alleged to have committed the mistake. In *Ramdas Shrinivas Nayak's* case (2 supra), the Supreme Court, while not allowing the learned Attorney General to contest the concession made before the Bombay High Court as recorded in the proceedings of the said Court, was pleased to hold :

"We are afraid that we cannot launch into an enquiry as to what transpired in the High court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

16. Of course, the facts of the present case are slightly different. But, in our considered opinion, the ratio of the judgment squarely applies to the facts of this case also. In the instant case, the orders made by the Division Bench on

14.8.1996 and 27.9.1996 do not at all refer to the terms and conditions subject to which the management had agreed to revert the respondent to the post of clerk nor do they refer to any submission made on behalf of the respondent regarding terms and conditions subject to which he had agreed to suffer penalty of reversion to the clerical cadre. But both the parties plead differently and contrary to each other as to the suggestions made by the Division Bench on 14.8.1996 and the submission made by the learned Standing Counsel for the Management on 27.9.1996. In other words, before this Bench which is not the same Bench which heard writ appeals and writ petition on 14.8.1996 and 27.9.1996, both the parties seriously contest as to what transpired before the Division Bench on 14.8.1996 and 27.9.1996 and the terms and conditions subject to which the management had agreed to impose the lesser penalty on the respondent reverting him from the officer cadre to clerical cadre and the terms and conditions subject to which the respondent had agreed to suffer that penalty. The question is whether they can be permitted to do so. The ratio of the judgment in Ramdas Shrinivas Nayak's case (2 supra) squarely applies and in that view of the matter, both the parties to the present writ petition cannot be permitted to canvas anything as to what transpired before the Division Bench in the course of hearing of writ appeals and writ petition on 14.8.1996 and 27.9.1996, which is not recorded either in the proceedings of the Court or judgments of the Court. If this is not permitted, in our considered opinion, the respondent is not entitled to the kinds of reliefs granted by the learned single Judge. It is not, and it cannot be, the case of the respondent that an officer of the bank cannot be reverted to the clerical cadre subject to the terms and conditions now imposed on the respondent by the Chief General Manager in his proceeding dated 31.1.1997 and the consequential office order passed by the Chief Manager on 6.2.1997. Conditions 1 and 2 incorporated in the office order of the Chief Manager dated 6.2.1997 do not violate any public law. It is also not the case of the respondent that the Management, in imposing those two conditions, has violated any of the legal rights of the respondent. There is no hard and fast public law rule that whenever a delinquent is punished by way of reversion to the lower post, protection of the last basic pay drawn before his suspension and initiation of the disciplinary proceeding should be accorded or that salaries with annual increments from the date of dismissal to the date of reinstatement should be granted unless a competent Court of law directs so to do. In the instant case, as already pointed out supra, the two conditions subject to which the respondent was reinstated by way of reversion from the officer cadre to the clerical cadre, do not offend any of the provisions of the Constitution or any provisions of any Statute or any of the common law rights of the respondent-employee.

17. We also find considerable force in the contention of Sri K. Srinivasa Murthy that since the respondent has not pleaded any statutory violation or violation of law in incorporating the above noticed two conditions in the proceedings of the General Manager dated 31.1.1997 and the office order of the Chief Manager dated 6.2.1997, legality questions would not arise for decision and therefore, the

writ petition is misconceived. It is trite that Article 226 is essentially meant to enforce legal rights of persons and citizens. The applicant filing the writ petition under Article 226 should either plead threat to his legal rights if he seeks writ of prohibition or violation of his legal rights if he seeks writ of certiorari. The respondent, in the entire affidavit filed in support of the writ petition, has not stated under which provisions of law he is entitled to the two benefits claimed by him in his representation dated 10.3.1997. In other words, the two claims made by the respondent are not supported by any legal document or provisions of the statute. If the respondent is not entitled to the two benefits mentioned in the representation, as a matter of right, enforcing such claims under Article 226 would not arise. Looking from that angle also, the writ petition filed by the respondent-petitioner is misconceived.

18. Thirdly, the request of the respondent to grant "all reasonable reliefs" is not only imprecise, but also as vague as it could be. It is trite, a party seeking the relief is bound to specify the relief which he seeks so that the person against whom such relief is sought should have reasonable opportunity to meet the case of the applicant and defend the action. The learned single Judge, in granting the nature of the reliefs to the respondent, has indirectly accepted the version of the respondent-employee and disbelieved the version of the Management of the Bank as to what transpired before the Division Bench when the writ appeals and writ petitions were heard on 14.8.1996 and 27.9.1996, and as already pointed out supra, such a course is impermissible for the Court. Looking from that angle also, the learned single Judge, as rightly contended by the learned Standing Counsel for the Bank, in granting the reliefs to the respondent, has exceeded jurisdiction vested in the Court under Article 226 of the Constitution.

19. We also do not find any merit in the contention of Sri V.S.R. Anjaneyulu that the General Manager of the Bank, in issuing the impugned proceeding dated 31.1.1997 imposing two conditions to reinstate the respondent in the clerical cadre by way of reversion in substitution of the penalty of dismissal from service, has violated principles of natural justice and fair play in action. We do not find any right in the respondent-employee to be heard in a matter like this and the judgment in Manzoor Ahmed Mazumdar's case (supra 1) relied upon by the learned counsel is out of context. In that case, the appellant therein was initially appointed as SDO (Mechanical) in the PWD of the Government of Assam and subsequently allocated to the Government of Meghalaya and he was dismissed from service under Article 311(2) second proviso to cl. (b) of the Constitution of India on 16.10.1975. On 22.4.1981, the High Court quashed the order of dismissal. Subsequently, by order dated 12.8.1982, the Government of Meghalaya directed that for the period for the first six months from 17.8.1975, the appellant would be entitled to pay as admissible had he been on half pay and allowances based on such leave salary (pay) as admissible under the State Government. For the remaining period from 17.2.1976 to 13.5.1981 it was directed that 3/4th of the pay and allowances based on such pay as may be admissible under the State Government for the period in question shall be paid

to him. It was also directed that the period from 17.8.1975 to 13.5.1981 shall not be treated as the period spent on duty. Therefore, the question was whether an opportunity should have been afforded to the appellant before passing the order dated 12.8.1982. Answering in the affirmative, the Supreme Court held that even though there is no express requirement in Assam F.R. 54(3) for giving an opportunity to the employee before passing an order, giving of such an opportunity is implicit in the exercise of the power, which has been conferred by the said provision. Therefore, the Supreme Court held that it was necessary for the competent authority to afford an opportunity to the appellant before passing the order regarding pay and allowances payable to the appellant in respect of the period of absence and since this was not done in that case, the order dated 12.8.1982 could not be upheld and it was accordingly set aside. In that case, the High Court had quashed the order of dismissal passed against the appellant. In the instant case, it is not that the High Court itself had passed an order directing reinstatement of the respondent into service in the clerical cadre in modification or substitution of the dismissal order passed by the disciplinary authority of the bank without any conditions, and in such case, if the management were to impose certain conditions prejudicial to the employee, appraising him and hearing him would have become necessary in terms of principles of natural justice and the binding case law, including the one cited by the learned counsel for the respondent-employee. But, here is a case where the respondent himself had agreed for the penalty of reversion to the post of clerk from the post of officer without specifying any conditions for such acceptance. In that view of the matter, it cannot be said that the orders made by the Division Bench in Writ Appeal Nos.945 of 1994, 1064 of 1992 and W.P.No.12101 of 1992 on 14.8.1996 and 27.9.1996 accord sanction of two benefits to the respondent-employee as claimed by him in his representation dated 10.3.1997.

20. In the result and for the foregoing reasons, we allow the Writ Appeal and set aside the order of the learned single judge dated 18.9.2000 and dismiss the writ petition No.2308 of 1999 with no order as to costs.