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**(2015) 07 MAD CK 0123**

**In the Madras High Court**

**Case No :** W.A. Nos. 336, 356 and 357 of 2008, 1657 of 2014, 224 and 259 of 2015 and W.P. No. 3267 of 2015

G. Arasukumar and Others

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

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**Date of Decision :** 01-07-2015

**Acts Referred:**

Constitution of India, 1950 — Article 19, 19(1), 19(1)(a), 19(1)(c), 19(2)  
Industrial Disputes Act, 1947 — Section 11-A, 2(s), 2-A  
Right to Information Act, 2005 — Section 2(h), 3, 4(2)

**Citation :** (2015) 3 LW 849

**Hon'ble Judges :** V. Ramasubramanian, J;K. Ravichandra Babu, J

**Bench :** Division Bench

**Advocate :** Balan Haridas, for the Appellant

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## **Judgement**

V. Ramasubramanian, J.—Though there are six writ appeals and one writ petition, all of them arise out of two sets of disciplinary proceedings initiated by the management of the State Bank of India against a person working as a Special Assistant in the Chennai Branch of the bank and two of his colleagues, who are office bearers of a trade union of employees of the bank.

2. Heard Mr. T.R. Rajagopalan, learned Senior Counsel for the management of the bank and Mr. Balan Haridas, learned counsel for the employees.

3. These six writ appeals and the writ petition, for the purpose of easy appreciation can be categorized as follows :

"(i) W.A. Nos. 336, 356 and 357 of 2008 arising out the dismissal of writ petitions filed by the president (M.V. Thangaswamy), general secretary (S. Gunasekar) and treasurer (G. Arasukumar) of the State Bank of India Ambedkar Trade Union (for short Ambedkar Union) challenging the charge memos issued against them in March/April 2007.

(ii) W.A. No. 1657 of 2014 filed by the management of the State Bank of India

(for short SBI) questioning the correctness of the order passed in a writ petition whereby a few charges framed against the general secretary of the trade union were set aside by a learned Judge.

(iii) W.A. No. 224 of 2015 filed by the management challenging an interim order of injunction granted in favour of the general secretary of the Ambedkar Union restraining the SBI from giving effect to the order of dismissal from service.

(iv) W.A. No. 259 of 2015 filed by the general secretary of the Ambedkar Union against the dismissal of his writ petition challenging the rejection of his applications for the grant of sick leave; and

(v) W.P. No. 3267 of 2015 filed by the general secretary of the Ambedkar Union against the order of dismissal from service."

4. All the six writ appeals and the writ petition can also be grouped subject-wise as follows :

"(i) three writ appeals arising out of a challenge to the charge memos issued against three office bearers of the Ambedkar Union, in the year 2007 where the disciplinary proceedings could not take off due to the pendency of the proceedings

(ii) one writ appeal arising out of an order in the writ petition whereby some of the charges framed against the General Secretary of the Ambedkar Union were quashed

(iii) one writ appeal arising out of the rejection of sick leave applications and

(iv) one writ petition and one writ appeal arising out of the dismissal of the general secretary of the Ambedkar Union."

5. In view of the fact that the three writ appeals arise out of a challenge to the charge memos, issued way back in the year 2007, we shall take up those three writ appeals first for disposal.

W.A. Nos. 336, 356 and 357 of 2008 :

6. The three Appellants are employees of the State Bank of India which is the sole Respondent in all the appeals. The Appellant in W.A.336 of 2008 (G. Arasukumar) was at the relevant time employed as a Senior Assistant in the Anna Salai Branch of the State Bank of India. At that time he was the treasurer of Ambedkar Union.

7. The Appellant in W.A.356 of 2008 (S. Gunasekar) was at the relevant time working as Special Assistant at the Chennai Main branch. He was also the General Secretary of the Ambedkar Union.

8. The Appellant in W.A 357 of 2008 (M.V. Thangaswamy) was at the relevant time working as Deputy Manager at the Overseas Branch of the SBI holding the rank of Officer MMG - Scale II. He was the President of the Ambedkar Union.

9. These three Appellants through their trade union sent a letter to the Governor of Reserve Bank of India, Chennai to take suitable action against the then Chief General Manager, SBI Chennai Circle (Pradip Chaudhary) for his gross negligence by a letter dated 2.5.2006. In that letter, they informed the RBI as follows :

"I understand that a sum of Rs. 30 lakhs (Rupees Thirty Lakhs) six bundles of Rs. 500/- denomination was missing from the currency notes stored in the strong room at our Avinashi Branch of Coimbatore Module in Chennai Circle of our State Bank of India. Though the joint custodians at the Branch are directly responsible for the loss, the Head of the Circle cannot shirk his moral responsibility.

The Circle Management is well aware that the Branch is known for irregularities in handling cash. We bring to your kind notice that an earlier occasions bundles of currency notes were missing in the currency remittance dispatched to Reserve Bank of India from this Branch. When it was brought to the knowledge of Appropriate Authorities, appropriate actions were not taken against the erring officials. It was observed that the Chief General Manager of the Circle Sri. Pradip Chaudhary, instructed the officials to take a lenient view in the matter in order to satisfy the interests of the recognized Trade Unions."

10. The trade union also sent a reminder letter to the RBI, Chennai renewing its request to take action against the Chief General Manager for his negligence. The said letter dated 15.12.2006 (with a copy marked to the Hon"ble Minister for Finance, New Delhi) contained the following request:--

"This is in furtherance to our letter cited in the reference above wherein we have requested you to take suitable action against Shri Pradip Chaudhary, Chief General Manager for his negligence and set an example that all are equal before law.

In the letter cited in the reference above we have clearly pointed out as to how Mr. Pradip Chaudhary had acted in a negligent manner thus causing loss to the Bank. In spite of various representations made to Mr. Pradip Chaudhary, no concrete steps have been taken by Mr. Pradip Chaudhary by bringing the culprit to book or for recovering the Cash.

In the above circumstances we call upon you to immediately take action against Mr. Pradip Chaudhary for his gross negligence. Earlier letter dated 02.05.2006 is also enclosed along with this letter for your kind perusal."

11. The Reserve Bank of India through its Deputy General Manager sent the following reply to the Ambedkar Union by a reply dated 28.2.2007:--

"Missing of currency notes from the strong room and shortage in the currency remittance to RBI - Avinashi Branch - Chennai Circle Please refer to your letter No. ATU/GS/29/06 and GS/Govt./310/06 dated may 2, 2006 and dated December 15, 2006 respectively addressed to our Governor on the captioned subject. In this connection, we advise that the matter has been taken up with the bank suitably."

12. Even before any corrective action could be initiated by the RBI, the Respondent SBI through its counsel issued a legal notice to the Ambedkar Union as well as the three Appellants herein, being the office-bearers of the Union, alleging that the Union pasted posters denigrating the Bank and its officers. The wall poster allegedly put up by the Ambedkar Union, when translated into English reads as follows:

13. In the legal notice issued by the management, it was alleged that the Union printed and pasted posters without properly verifying the truth of the matter and with a view to defame the bank and cause damage to their business and reputation. The legal notice called upon the Union to tender an open public apology within two days failing which they were threatened with appropriate civil and criminal action.

14. The Ambedkar Union sent a reply dated 19.7.2006 listing the number of instances when cash was missing in various branches. In one such instance that took place at Salem branch, it was the action of the Union that led to the CBI to take up the investigation. Therefore, the Union claimed that instead of taking corrective action, the Chief General Manager was docile, leading to several such instances. Therefore, the Union claimed that they pasted posters to highlight this.

15. After the issue of the legal reply by the Union, the Bank issued a show cause notice dated 30.8.2006 to Gunasekar, the Secretary of the Union, a notice to dated 1-9-2006 to Mr. G. ArasuKumar and a notice dated 20.11.2006 to Thangaswamy. Therefore, they all sent individual replies dated 27.9.2006, 6.10.2006 and 4.1.2007 pointing out that the bank had already threatened them with a legal notice. They pointed out that the action taken by them was the action of their trade union and that they have not expressed any individual opinion.

16. However, the Respondent SBI filed a civil suit in the original side of this court in C.S. No. 132/2007 against the Ambedkar Union and the three appellants claiming damages in a sum of Rs. 11,00,000/- for pasting posters in public and issuing handbills to public making defamatory allegations and causing damage to the reputation of the bank. The Respondent also sought a permanent injunction restraining the appellants and their trade union from carrying on activities prejudicial to the interest of the bank by pasting posters, circulating handbills, placards in defamatory nature affecting the image of the bank directly or indirectly. The Respondent bank also took out an application in O.A. No. 181/2006 seeking an interim injunction restraining the appellants from carrying on activities contrary to the interests of the Bank by pasting posters circulating handbills, placards or in any other manner in defaming and affecting the image of the Bank pending disposal of the suit. An interim order was granted by a learned Judge of this court on 21.2.2007 in the said application. The suit got transferred to the City civil court, after the enhancement of the pecuniary jurisdiction of the city civil court and is still pending.

17. Notwithstanding the filing of the suit, the respondent Bank also initiated disciplinary proceedings against the office bearers of the Union by issuing a charge memo dated 10.3.2007 to Gunasekar (Appellant in 356/08), a charge sheet dated 7.4.2007 Arasukumar (Appellant in 336/08) and a charge memo dated 7.3.2007 to Thangaswamy (Appellant in 357/08).

18. Since Gunasekar and Arasukumar were covered by the award and settlement, they were charge sheeted as per clause 5(b) and 5(j) of the Memorandum of Settlement dated 10.4.2002. Clause 5 of the Memorandum of Settlement lists out various misconducts which are described as gross misconducts and clause 5 (d) and 5(j) under which the two appellants were charge sheeted reads as follows:--

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

(d) willful damage or attempt to cause damage to the property of the bank or any of its customers

(j) doing any act prejudicial to the interest of the bank or gross negligence involving or likely to involve the bank in serious loss."

19. The four charges leveled against the two workmen (covered by Award and Settlement) are identical. For easy appreciation, the charges leveled against Gunasekar are extracted as follows:--

"(i) Shri S. Gunasekar and others have unauthorisedly printed and displayed posters detrimental to the interest of the Bank.

(ii) The posters displayed by Shri S. Gunasekar and others contain defamatory statements which are prejudicial to the interest of the Bank.

(iii) The posters displayed by Shri. S. Gunasekar and others contain a false and defamatory allegations against the entire officers - staff and management.

(iv) Shri. S. Gunasekar and others divulged the internal matters of the Bank with ulterior motive and malafide intentions during the pendency of the investigation/ departmental action by the Bank, by displaying the said posters and thus caused damage to the reputation of the Bank."

20. In the case of Thangaswamy, who belonged to the officer's cadre, similar charges were framed under Rule 50(4) of the State Bank of India Officers Service Rules. The said Rule reads as follows :

"50(4) Every officer shall, at all times, take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer."

21. The statement of allegations (misconduct) based on which charges were framed against the three Appellants were as follows:--

"(i) Shri S. Gunasekar and others displayed in the posters, the distorted information relating to cash shortages, with an ulterior motive and with a view to affect the commercial interests of the Bank

(ii) The 2nd line of the posters displayed by Shri. S. Gunasekar and others contain a derogatory statement, which when translated, read as "Officers! Can you swindle public funds?", giving an impression as if the entire amount of shortage has been siphoned off by the officials themselves, which was defamatory of all officials - staff.

(iii) Though investigation was pending/corrective departmental action against erring staff/officials were taken/are being conducted including the recovery of shortages from the staff/officials responsible, the poster contains disparaging, libelous and defamatory statement against the Bank."

22. The stand taken by the bank that can be gathered from these allegations is that the allegations contained in the poster tend to defame the bank and cause damage to its business and reputation. According to the bank, investigation was pending and corrective departmental action against the erring staff and officials had already been taken which included recovery of shortages from the staff, but yet the poster contained disparaging, libelous and defamatory statement against the bank. This stand taken by the bank is rather unfortunate and a close reading of the poster does not support the opinion formed by the bank. The bank has not chosen to question the truthfulness of the allegations made by the union. In the light of the allegations, the union had merely called upon the Chief General Manager to take moral responsibility and resign from his position, perhaps as an ideal officer. The term "fence eating crops" followed by a general statement questioning whether the officers can swindle public funds, cannot be taken to be defamatory.

23. Therefore, the two appellants M/s. Gunasekar and Thangaswamy first moved this court with two writ petitions in W.P. Nos. 10925 and 10926 of 2007 challenging the charge memos issued dated 10.3.2007 and 7.3.2007 respectively. While admitting the two writ petitions, a learned single bench granted an interim stay on 23.4.2007. It was observed in the interim order that since the bank had exercised the option of filing a suit for damages against the two appellants, it was improper for them to proceed with the disciplinary action.

24. At the initiative of the bank, both the writ petitions were taken up for final disposal and were dismissed by a common order dated 27.9.2007. It was held by the learned Single bench that a reading of the charge memo indicated that the acts committed by the Appellants came within the definition of misconduct and that though the bank had filed a civil suit, there was no bar in law for initiating disciplinary action. The learned Judge opined that the suit was for recovery of damages for the tortuous acts committed by the Appellants and that it is a civil liability. Significantly the learned single Judge did not go into the larger question as to whether the charge memo itself was maintainable or not. Therefore,

aggrieved by this common order of the learned Judge dated 27.9.2007, the two writ appeals, Writ Appeal 356 and 357 of 2007 came to be filed.

25. In so far as the other appellant Arasukumar is concerned, he filed W.P. No. 15290 of 2007 challenging the charge memo dated 7.4.2007. While admitting that writ petition, an interim stay of further proceedings was granted on 22.4.2007. However following the dismissal of the other 2 writ petitions, the third writ petition was also dismissed by another learned Judge by an order dated 12.12.2007. Even in this W.P., the learned judge did not go into the question of the validity of the charge memo. Therefore, Arasukumar has come up with the writ appeal W.A. No. 336 of 2008. In view of the commonality of all the issues raised, all the three writ appeals were grouped together and taken up.

26. The circumstances under which disciplinary proceedings can be allowed to proceed pending civil or criminal action had received attention of the Supreme Court in many cases. In Jang Bahadur Singh Vs. Baij Nath Tiwari, AIR 1969 SC 30 : (1969) CriLJ 267 : (1968) 17 FLR 300 : (1969) 1 LLJ 567 : (1969) 1 SCR 134 , the Supreme Court held that pendency of the court proceedings is not a bar for taking disciplinary action. It was observed:

"The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a willful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers."

27. The said decision was came to be followed in Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, AIR 1988 SC 2118 : (1988) 3 JT 576 : (1988) 2 LLJ 470 : (1988) 2 SCALE 641 : (1988) 4 SCC 319 : (1988) 2 SCR 821 Supp : (1989) 1 UJ 17 wherein it was observed as follows:--

"The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken. yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent- employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings

should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual-situation.."

28. In Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416 : (1999) 2 CTC 579 : (1999) 82 FLR 627 : (1999) 2 JT 456 : (1999) 1 LLJ 1094 : (1999) 2 SCALE 363 : (1999) 3 SCC 679 : (1999) SCC(L&S) 810 : (1999) 2 SCR 257 : (1999) AIRSCW 1098 : (1999) 3 Supreme 376 , the Supreme Court issued guidelines as to under which circumstances an order interdicting a disciplinary action, during the pendency of proceedings in other courts, can be passed. These guidelines are as follows:--

"The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

29. Unfortunately the three writ petitions filed by the Appellants were dismissed by two separate orders without reference to the principles laid down in the above cases. While there can be no legal bar for proceeding with disciplinary action against employees pending civil or criminal action, it has been held that in a given case, the court can, in the interest of justice, restrain the disciplinary authorities from proceeding with their action pending the outcome of the court

cases. That option was not exercised in the case of the three employees.

30. In this case, as noted above the Ambedkar Union, of which the three appellants were office-bearers complained to the Reserve Bank of India for corrective action. The RBI did respond to their representation. The only issue found in the charge memo was the contents of the posters published by the Union. The three appellants did not disown its publication. On the other hand, they had submitted that it was in public interest that the publication was made. Therefore the only question was whether it was defamatory or not. That issue has been squarely raised in the civil suit filed by the SBI in which the Ambedkar Union was made as 1st defendant. In the civil suit there was also a prayer for permanent injunction for future publications. As noted above, the bank had also obtained an interim injunction. Alleging that the three appellants had violated the terms of the interim order, a contempt petition was also filed by the Respondent SBI in Contempt Petition No. 828/2007. A learned single judge dismissed the contempt petition by order dated 29.6.2011. In para 13 and 15 of the order it was observed as follows:--

"13. It is unfortunate that a public sector bank like the petitioner Bank should file a suit not only for claiming damages, for loss of reputation but also seeking for a prior restraint on the trade union in publishing hand bills, posters and putting up placards. It is seen from the contents of the posters that it was only an appeal to the Bank for taking action. By no stretch of imagination, that can be said to be violating the orders of this Court. On the other hand, specific instances were pointed out to the Chief General Manager to take appropriate action. Instead of taking action on the grievances projected by the trade Union, the Bank represented by its Assistant General Manager had filed the suit. In fact under the State Bank of India Act, it is only the Bank represented by its Board of Directors can represent the Bank, though there may be possibility of delegated power entrusted to its subordinate officers. When the higher level officers were asked to take action on the subordinates, certainly it would not amount to defaming the bank. In any event, the injunction is only to prevent the respondents from pasting posters and circulating handbills or in any other manner defaming and affecting the image of the bank. The image of the bank cannot be confused with the officers at the lower level committing fraud, misconduct, embezzlement. Certainly when a Trade union finds that action is not being taken, they can take the issue to the public and the grievance projected in no way amounts to defaming the bank. An employee working in a public sector bank also owes a public duty when public funds were frittered away or misappropriated."

"15. Infact, a trade union has been given power to demonstrate and it includes various forms of protest. It has been recognized as a recognized mode of redress.....Publishing posters and distributing hand bills is a means to ventilate the grievances of the employees and free speech in our country is recognised as a fundamental right under Article 19(1) of the Constitution subject to reasonable restriction."

31. The order dismissing the contempt petition became final. The bank however did not give up its efforts to pursue their remedies both civil and departmental. In this case, the disciplinary action and the civil suit emanated from the same fact i.e. the publication of the posters. The common law remedy of claiming damages for a tortious liability with quantified damages had already been initiated by the bank. Merely because the bank had referred to various clauses of misconduct in the impugned charge memo, it does not take away the fundamental question as to whether the appellants have defamed the bank or not. Such a finding will have to be rendered in the civil suit as it was instituted even before the charge memos were framed against the appellants. Therefore the learned judges who dismissed the three writ petition by two different orders were not correct in doing so and they ought to have confirmed the order of stay in restraining them from proceeding with the disciplinary action pending the suit. On this short ground, the three writ appeals are liable to be allowed and the management should be restrained from proceeding with the departmental action at least until the suits are disposed of.

32. But, considering the fact that the matters are pending for over 9 years and the three writ petitions themselves were directed against charge memos the counsel on both sides chose to argue on the merits of the original writ petitions. The learned counsel for the appellants submitted that the charge memos were completely vitiated and that they do not fall under any of the clauses contained in the Memorandum of Settlement between the Unions and the Management.

33. However it was contended by the learned senior counsel for the bank that at the stage of a charge memo, there is no scope for interference and drew our attention to a judgment of the Supreme Court in *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, AIR 2004 SC 1467 : (2004) 120 CompCas 467 : (2004) 91 ECC 299 : (2004) 112 ECR 501 : (2004) 164 ELT 141 : (2004) 1 JT 206 : (2004) 1 SCALE 330 : (2004) 3 SCC 440 : (2004) 50 SCL 93 : (2004) 2 SCR 399 : (2004) 1 UJ 744 : (2004) AIRSCW 416 : (2004) 1 Supreme 431 . That was a case relating to an interim order granted by the High Court without giving reasons. That can be seen from the following passages found in the said judgment:--

"Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine"

"In the instant case, the High Court has not indicated any reason while giving interim protection. Though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which has weighed with it in granting such an extra ordinary relief in the form of an interim protection."

34. The learned senior counsel for the bank then referred to the judgment of the

Supreme Court in Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, AIR 2007 SC 906 : (2007) 112 FLR 325 : (2006) 12 SCALE 262 : (2006) 12 SCC 28 : (2007) 2 SCC(L&S) 304 : (2006) 10 SCR 257 Supp : (2007) 3 SLJ 338 . Even in that judgment, it was observed as follows:--

"Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet."

"No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

35. The next judgment referred to by the learned senior counsel for the Bank, was the one in The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, AIR 2012 SC 2250 : (2012) 134 FLR 1 : (2012) 5 SCALE 734 : (2012) 11 SCC 565 : (2013) 1 SCC(L&S) 121 : (2012) AIRSCW 3470 . But it was a case of corruption where a charge memo was quashed on grounds of delay. Therefore it is not comparable to the case on hand.

36. Per contra, the learned counsel for the Appellant placed reliance upon the judgment of a division bench of this court in D. Thomas Franco Rajendra Dev Vs. The Disciplinary Authority and Circle Development Officer and State Bank of India, (2014) 1 LLN 244 : (2013) LLR 1065 : (2013) 7 MLJ 82 : (2013) WritLR 971 in which the very same bank was the Respondent and wherein a charge memo was quashed with the following observations:--

"The contention of the respondent that a decision could be arrived at only by a fact-finding body is too far fetched an argument. On the facts available and going through the allegation, we do not find any ground to hold that such decision requires any further enquiry into the facts and that this Court should not interfere at the stage of the notice but leave it to the authorities to proceed"

"In the circumstances, even though the proceedings challenged before this Court are at the stage of charge memo, considering the weakness of the allegations made, not fitting in with the misconduct concept, and with discriminatory treatment writ large, we have no hesitation in allowing the Writ Appeals, thereby setting aside the order of the learned single Judge. Accordingly, the Writ Appeals are allowed and the proceedings challenged in the writ petitions are quashed."

We were told that the said order of the division bench has become final as no appeal was filed. The objection regarding the maintainability of a challenge to a charge memo, raised by the Respondent SBI in the present appeals, was thus rejected and the Bank did not choose to question the said decision. It is relevant to note that the employees involved in those cases were officer-level employees and the Bank has chosen to accept the verdict of this court.

37. In the light of the said decision of the Division Bench of this court, passed in

favour of the Officers of the Bank, the learned counsel for the Appellant submitted that the charge memos per se were not maintainable and that the appellants have not committed any misconduct either within the purview of clauses 5(d) and 5(j) of the Memorandum of Settlement, or within the purview of regulation 50(4) of the State Bank of India Officers Service Rules. In fact Regulation 50(4) of the Officers Service Rules enjoins upon every officer to take possible steps to ensure and protect the interest of the bank. He submitted that when there were series of cash shortages reported with no proper action by the bank, it is the interest of the bank which suffers. The Trade Union of which the three appellants were office-bearers took due steps to complain to the Reserve Bank of India which is the controlling authority and they were informed that the RBI was seeking information from the Respondent SBI. He also pointed out that even in the statement of imputations in support of the charges the bank had admitted that they were carrying on investigation and taking corrective departmental action against officials including recovery of shortages.

38. We agree with the submissions of the counsel for the appellant. Except taking exception to the posters and their display at various places, the bank has not chosen to deny the contents of those posters regarding the cash shortages. A mere demand for the resignation of the Chief General Manager owning moral responsibility, cannot be a defamatory statement. The offending passage set out in the charge memo to the effect that the entire amount of shortage was siphoned off by officials is not a correct translation of the sentence found in the poster printed in Tamil. On the other hand, as pointed out earlier the correct translation of the said sentence is as follows: Officers! Can you swindle public funds. It is merely a poser and not an assertion. It was more of a question than an answer. In the light of a series of cash shortages reported, one cannot really blame the appellants of committing a misconduct. We do not know how the action of the trade union and its office-bearers in putting up the posters can be detrimental to the interest of the bank if the substance of those allegations are not denied.

39. Exposing the inaction of the bank in the light of series of cash shortages can only be in public interest and making such statements cannot be detrimental to the interest of the bank. As pointed out earlier, the bank itself expects its officers to take all possible steps to ensure and protect interest of the bank. Publishing or exposing the cash shortages in the bank and the inaction of the top officers cannot amount to willful damage to the property of the bank. It cannot even be said to be prejudicial to the interest of the bank.

40. In the affidavit filed by the Respondent SBI along with the vacate stay application in W.P. No. 10925 of 2007, the bank itself had admitted the various irregularities which were detected.

"Para 10 : It is true that on a certain occasion, there was a shortage in the amount remitted in the Currency Chest and the Bank has been taking action against the officials responsible for the said shortage. There has been no let up

either in recovering the loss or punishing the officials responsible for the said shortage."

"Para 13 : As regards Para No. 11 of Writ Petition, it is submitted that necessary action has been taken and the same is in progress with regard to missing amount of Rs. 30,00,000.00 (Rupees Thirty Lakhs Only) from the Currency Chest. It is also incorrect to state that the bank was insensitive to the issue of missing amount from the Currency Chest. The Bank has been taking prompt action wherever it was required to be taken. The allegation that public money has been looted and it was growing in an alarming position, is nothing but a reckless and irresponsible statement without any basis."

41. After having taken the above position with regard to the missing money, the Bank went on to question the entitlement of the trade union to be bothered about these irregularities. A perusal of the counter affidavit filed by the bank in the writ petitions will clearly show that the bank questioned the role of the trade union more than the veracity of the allegations made by the Union. It is necessary to extract some passages from the affidavit to show the mindset of the bank in this regard:

"In any event, these are all matters which are in the exclusive administrative domain of the Bank. Neither the petitioner nor his Trade Union has got any Laws to question the same."

"Para 14 : Merely because few incidents have taken place in the Bank, that does not give any right to the petitioner to paste posters demanding the resignation of Chief General Manager."

42. It is unthinkable that the Respondent SBI, a premier bank of the Govt. of India should come up with such statements as indicated above. The Constitution of India has guaranteed under Article 43-A, the right for the workers in the management of the industries. Pursuant to the same, the government has made certain provisions for the nomination of the officers and employees as Directors of the bank. Moreover, the fundamental duties prescribed for every citizen under Article 51-A, includes in sub-clause (i), a duty upon every citizen to safeguard public property.

43. In this context, it is necessary to extract an observation made by the Supreme Court with reference to main object of labour law vide its judgment in *The Workmen of Bhurkunda Colliery of Central Coalfields Ltd. Vs. The Management of Bhurkunda Colliery of Central Coalfields Ltd.*, (2006) 108 FLR 826 : (2006) 2 JT 1 : (2006) 1 LLJ 842 : (2006) 1 SCALE 595 : (2006) 3 SCC 297 : (2006) SCC(L&S) 530 : (2006) 1 SCR 851 : (2006) 2 SLJ 190 : (2006) AIRSCW 2740 : (2006) AIRSCW 452 : (2006) 5 Supreme 73 : (2006) 1 Supreme 545 :

"The main object of enacting Industrial and Labour laws is to ensure peace and harmony between the employers and the employees in the larger interest of the

society."

"The industrial growth leading to economic prosperity largely depends on happy and healthy relationship between employers and employees."

"It is also our bounded duty to give expression to the legislative intention for creating a healthy environment leading to proper understanding and cooperation and in true sense a partnership between the employers and the employees in cases of industrial disputes."

"The interests of the employees which have received constitutional guarantees under the Directive Principles, the interests of the employers which have received a guarantee under Article 19 and other Articles of Part III, and the interests of the community at large which are so important in a Welfare State. It is on these lines that industrial jurisprudence has developed during the last few decades in our country."

"Both employers and employees have their respective obligations. They must have the appreciation of each others" responsibilities, duties and obligations. The Trade Union and Labour Union should understand and appreciate the fact that Labour is not a commodity nor is it a mere supply of Labour force at the management's disposal. Essentially, Labour is the real basis that underlines the production of goods and services. Through the work should the human personality and its sense of responsibility be able to unfold, management should appreciate this and always attribute its success to the trained and effective labour force. It must be understood by all concerns that both the employees and employers are vital for any industry and unless there is proper coordination, a smooth functioning of any industry would be difficult."

44. Even while dealing with a case of prolonged absence of a Government servant, the Courts were forewarned by the Supreme court from showing any indulgence when such cases are brought to court and the need to apply the fundamental duty enshrined in Article 51A(j) of the Constitution by the Supreme Court vide its decision in Government of India and Anr Vs. George Philip, AIR 2007 SC 705 : (2007) 112 FLR 1067 : (2006) 10 JT 487 : (2006) 12 SCALE 122 : (2006) 9 SCR 108 Supp . It is necessary to refer to the following passage found in paragraph 18 of the said judgment, which is as follows:

"18....Article 51-A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy the same."

45. Therefore we do not think that the Respondent SBI was right in initiating a disciplinary action against the three appellants in respect of the poster in

question either on the ground it had interfered with the commercial interest of the bank or it had defamed the bank. We do not find anything defamatory in the contents of the poster which gave rise to the impugned charge memos against the appellants. Merely pointing out the lapses of the bank and also seeking for the resignation of the Officer in charge of the affairs can never be considered either as defamatory or against the interest of the institution. On the other hand, the appellants and their union have given petitions to the appropriate corrective machinery and thereafter had also taken the issue to public only with the bonafide view of finding solutions. We are of the view that neither 5(d) nor 5(j) of the Memorandum of Settlement describing misconducts will apply to the fact situation. So is the case of Regulation 50(4) of the Service Rules.

46. However, the learned counsel for the Respondent SBI referred to the judgment of the Supreme Court in *M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation*, (1998) 2 AD 291 : AIR 1998 SC 1064 : (1998) 1 JT 719 : (1998) 1 SCALE 616 : (1998) 3 SCC 732 : (1998) SCC(L&S) 946 : (1998) 1 SCR 919 : (1998) AIRSCW 850 : (1998) 2 Supreme 118 and relied upon the following passage in support of his contention that an employee has no right to write letters containing defamatory passages and there is no fundamental right vested on them under Article 19(1)(a) of the Constitution.

"The right to freedom of speech and expression is subject to reasonable restrictions under Article 19(2). Such restrictions can be in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Similarly, Article 19(1)(c) is also subject to reasonable restrictions under Article 19(4). Such reasonable restrictions can be made, inter alia, in the interest of public order or morality. Article 19(2) or 19(4) may not be directly relevant in the present case in view of the provisions contained in Rule 22 of the Service Rules. Rule 22 of the Service Rules is not meant to curtail freedom of speech or expression or the freedom to form associations or unions. It is clearly meant to maintain discipline within the service, to ensure efficient performance of duty by the employees of the Corporation, and to protect the interests and prestige of the Corporation. Therefore, under Rule 22 an employee who disobeys the service Rules or displays negligence, inefficiency or in-subordination or does anything detrimental to the interests or prestige of the Corporation or acts in conflict with official instructions or is guilty of misconduct, is liable to disciplinary action. Rule 22 is not primarily or even essentially designed to restrict, in any way, freedom of speech or expression or the right to form association or unions. A Rule which is not primarily designed to restrict any of the fundamental rights cannot be called in question as violating Article 19(1)(a) or 19(1)(c). In fact, in the present proceedings the constitutional validity of Rule 22 is not under challenge. What is under challenge is the order of dismissal passed for violating Rule 22 when the impugned conduct which violates Rule 22 is held out as an exercise of a right under Article 19(1)(a) or 19(1)(c)."

"In all these cases, this Court has been at pains to point out that Service Rules can be framed to maintain efficiency and discipline within the ranks of Government servants. In the case of O.K. Ghosh (supra), this Court considered such Rules as being saved by the "public order" clause under Article 19(4). In the present case, the restraint is against doing anything which is detrimental to the interests or prestige of the employer. The detrimental action may consist of writing a letter or making a speech. It may consist of holding a violent demonstration or it may consist of joining a political organisation contrary to the Service Rules. Any action which is detrimental to the interests or prestige of the employer clearly underlines discipline within the organisation and also the efficient functioning of that organisation. Such a Rule could be construed as falling under "public order" clause as envisaged by O.K. Ghosh (Supra)."

47. But as rightly contended by the counsel for the Appellants, a government servant or an employee of a public sector institution will not lose his fundamental rights merely because of his holding an employment in that organization. In S.D. Sharma Vs. Trade Fair Authority of India and Others, (1985) 2 LLJ 193 : (1985) 1 SLJ 160 a division bench of the Delhi High Court upheld the right of the workers to hold demonstrations and shout slogans. In paragraph 28, it was observed as follows:--

"28....It is possible that during the course of speech or demonstration some kind of slogans which may not be very proper may have been raised. But then this country recognises the holding of demonstration and though one may not be very happy that sometimes demonstrations may use a language which is not very polite one cannot also ignore that in the heat of movement and when mass of people are raising slogans in support of their demands and more so when they feel that for over two years the demands have not been fulfilled it is possible that some kind of harsh words and slogans may have been raised. But all this is a far cry from the charge which had necessarily to be proved before the petitioner can be held guilty these slogans and that their action was subversive of discipline. One or two slogans even if touching on the border of permissive parameters cannot be torn out of their context and considered in isolation. In order to appreciate the impact of any slogan the total overall picture must be kept in view and when we look at the picture it is peaceful meeting of the employees held in dignified manner raising their demands no doubt also shouting slogans, but mostly in support of their union and demands."

48. In B.R. Singh and others Vs. Union of India and others, AIR 1990 SC 1 : (1989) 4 JT 21 : (1989) 2 LLJ 591 : (1989) 2 SCALE 697 : (1989) 4 SCC 710 : (1989) 1 SCR 257 Supp : (1990) 1 SLJ 120 it was held that the publication and distribution of handbills is a recognized fundamental right. The following passage is of relevance:--

"Publishing posters and distributing hand bills is a means to ventilate the grievances of the employees and free speech in our country is recognised as a fundamental right under Article 19(1) of the Constitution subject to reasonable

restriction."

49. As rightly contended by the learned counsel for the appellants, the Supreme Court, In Vijay Shankar Pandey Vs. Union of India (UOI), AIR 2015 SC 326 , took exception to the Union of India taking action against a central government servant for criticising the actions of the government. This decision is pressed into service to contend that the criticism of the government though was forbidden under Rule 7 of the CCS (Conduct) Rules, was still considered as the fundamental right guaranteed under Article 19(1)(a). It was observed in the said decision as under:--

"Coming to the 3rd reason given in the IMPUGNED Order that the content of the Writ Petition (C) No. 37 of 2010 is critical of the Government of India, and therefore, violative of Rule 3(1), 7, 8(1) and 17 of the CONDUCT Rules, we are of the opinion that this ground is equally untenable.

35. Rule 17 of the CONDUCT Rules reads as follows:

"17. Vindication of acts and character of members of the service.-

No member of the service shall, except with the previous sanction of the Government, have recourse to any Court or to the press for the vindication of official act which has been the subject-matter of adverse criticism or attack of a defamatory character.

Provided that if no such sanction is conveyed to by the Government within twelve weeks from the date of receipt of the request, the member of service shall be free to assume that the sanction sought for has been granted to him.

Explanation. -Nothing in this rule shall be deemed to prohibit a member of the Service from vindicating his private character or any act done by him in his private capacity. Provided that he shall submit a report to the Government regarding such action."

"We fail to understand how this Rule could be said to have been violated, in the background of the allegations contained in the charges framed against the appellant. In our opinion, this rule has no application whatsoever to the allegations contained in the charge-sheet. ...."

"The respondents consider that a complaint to this Court of executive malfeasance causing debilitating economic and security concerns for the country amounts to inappropriate conduct for a civil servant is astounding."

50. Even in the judgment of the division bench in D. Thomas case (cited supra), to which the Respondent was a party, it was held that merely because an officer had taken part in the lunch hour demonstration, he cannot be dealt with under the service rules and his fundamental right under Article 19(1)(a) is held intact. The division bench judgment was not taken on appeal by the management of SBI and it has become final. Hence it is necessary to refer certain passages from the said judgement which is as follows:--

"28. A reading of Rule 50(4), 50(5), 50(6) thus show that it is concerned about the conduct of an Officer of the Bank, that he shall behave at all times with a sense of responsibility, integrity, honesty, devotion and diligence, to ensure that the interests of the Bank are protected. The Rule also enjoins the responsibility on the officer to ensure that others also behave with a sense of devotion. The code of conduct thus prescribed cannot be read as something special to an organisation like a big institution, but one of universal application to every employee employed in an institution, so that the conduct of the business goes in a disciplined way, that there is orderliness to inspire third parties to transact business with them. Thus, an act which causes a dent in or a damage to the reputation or image or goodwill of the bank to undermine the confidence of people having business or proposed to have business in the institution, is certainly an act of misconduct. But, could holding of a demonstration, per se, amount to a misconduct? The holding of a demonstration is held to be a constitutional right guaranteed under Article 19 of the Constitution of India. Thus, so long as the same is not violative of Rule 54, such holding of the demonstration certainly stands protected by Article 19. We fail to understand how holding a demonstration, per se, would amount to a misconduct. The respondents do not dispute that the right to hold a demonstration in a peaceful manner is one within the scope of Article 19 of the Constitution of India."

"30. Given the fact that the Staff Association is a registered Association and that holding of the post in the Association even by an Officer is not an anathema to holding of the post of a General Manager or an Officer of high order in a Bank, such post in the Union being recognised by the Management itself, in the face of the guaranteed right to hold demonstration as a form of free expression and speech, the imputations are of very generic nature and goes against the very concept of forming a Union as well as holding a peaceful demonstration. While the respondents do not deny that the Union is a registered Union recognised by the Bank, we fail to understand how the participation by an Officer who incidentally holds the post in the governing body of the Union, would go against Rule 50(4), 50(5) and 50(6) of the Rules."

"35. Thus, if Rule 50(4), 50(5) and 50(6) requires any reconciliation with Rule 54, it is only such of those conduct which are incompatible to the reputation and goodwill of the bank and offensive of Rule 54, could be called as misconduct for initiating action and nothing else. By so holding, we do not propose to make a wide proposition that all demonstrations are protected. Ultimately, what is misconduct on the holding of the demonstration depends on the facts and circumstances of the case. Yet, a healthy expression or the opposition to a policy or criticism of the policy could only be read as voicing of a view point by a segment of employees and with Article 19 recognising such right as a guaranteed right, we fail to understand the logic of the respondents that holding of such a demonstration has brought disrepute to the Bank or affected the functioning of the Bank, amounting to misconduct.....Thus, going by the decision of the Apex Court, the materials available are sufficient enough to hold that the status of the

demonstrators as Officers of the Bank does not make their conduct violative of Rule 50(5), 50(6) and 50(7) of the Rules."

51. In view of the above discussion, we do not find any misconduct as having been committed by the Appellants by the publication of the poster in the name of their trade union. The contents of the poster if translated properly does not disclose any misconduct. On the other hand, it is the duty of every citizen to safeguard public properties as enjoined in the fundamental duties imposed on them by Article 51A of the constitution. Merely because it has exposed some irregularities, that will not affect the commercial interest of the bank as contended by the Respondent. On the other hand, only by such exposures, correctional measures can be taken and the bank can assure the general public that all is well with them. If the bank was of the opinion that the poster has given only about the irregularities they could have always issued a public statement contradicting the stand of the trade union and also the correctional measures taken by them.

52. The trade unions and public sector banks have always published the list of defaulters and the non-performing assets of the bank in order to bring it to the notice of the general public and the government so that corrective actions can be taken. It must be noted that with the advent of the Right to Information Act, 2005, the Bank has become obliged to disclose information to the public. Section 3 of the said Act entitles all citizens to a right to information. Section 4(2) of the said Act provides as follows:--

"(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information."

53. Public Authority is defined under section 2(h) of the Act to include any body owned, controlled or substantially financed. The respondent Bank is a "public authority" within the meaning of the Act and they owe a duty to disseminate information even suo moto. Hence they need not unnecessarily feel touchy about publication of matters involving some scams in the bank. When the Respondent SBI resorted to publication of photographs of the defaulters of dues to the bank, it was challenged by the defaulters and grounds of privacy was taken. One of us (V.R.S.J) rejected the objections and upheld the right of the bank to publish photographs of defaulters. It was considered that the defense of privacy was not available to the defaulters. It was pointed out in the said case Mr. K.J. Doraisamy Vs. The Assistant General Manager, State Bank of India, Erode Branch and The Chief Manager (PBD), State Bank of India, Erode Branch (0837), (2007) 136 CompCas 568 : (2006) 5 CTC 829 : (2006) 4 MLJ 1877 : (2007) 78 SCL 196 , that:--

"If borrowers could find newer and newer methods to avoid repayment of the

loans, the Banks are also entitled to invent novel methods to recover their dues."

Though the said view was not followed by some other high courts (Kerala, Delhi) which took a contra view, this is highlighted only to show that exposure of defaults only done in public interest.

54. In view of the above, we have no hesitation to set aside the charge memos given to Appellants dated 7.3.2007 (Thangaswamy - W.A. No. 357/08), 10.3.2007 (S. Gunasekar- W.A. No. 356/08) and 7.4.2007 (G. Arasukumar-W.A. No. 336/08) and hence writ petitions 10925, 10926 and 15290 of 2007 will stand allowed, however there will be no order as to costs.

II. W.A. No. 1657 of 2014, 224 of 2015, 259 of 2015 and W.P. No. 3267 of 2015 and connected M.Ps

55. Even during the pendency of the above petitions, Ambedkar Union lodged four complaints with the Chief General Manager on 18.10.2013, 31.10.2013, 16.11.2013 and 4.1.2014 making specific allegations of misappropriation and abuse of official position by named officers of the bank. During the pendency of the earlier proceedings, M/s. M.V. Thangaswamy and G. Arasukumar ceased to be office bearers of the Ambedkar Union as noted in Para 16 of the Contempt Petition No. 828 of 2007 dated 29.6.2011. Therefore, the only person left for the bank to take action was the General Secretary Gunasekar, who is the only party in all these proceedings.

56. It appears that a few handbills came to be distributed on 8.1.2014 and 10.1.2014, near the main entrance gate of the local head office of the bank. According to the bank, the first handbill printed in Tamil, when translated would read as follows:--

The second handbill also went on similar line and it is unnecessary to extract the same.

57. Immediately, a charge memo dated 19.2.2014 was issued against the general secretary S. Gunasekar alleging

"(1) That on 8.1.2014, he left the branch at 9.50 a.m. without prior permission of the Chief Manager under whose control he was working.

(2) That from 9.55 a.m. to 10.19 a.m., he personally distributed the handbills near the side entrance of the administrative office (garage side) to the members of the public as well as staff with a view to tarnish the image of the bank.

(3) That between 9.46 a.m. and 10.05 a.m. on 10.1.2014, he distributed the handbills to the staff members and the public at the main entrance of the local head office and

(4) That he unauthorisedly absented himself on 10.1.2014 and was found distributing handbills."

58. According to the Bank, the employee grossly violated the conduct rules in

terms of Clause 5(d), 5(j), 7(b), 7(c), and 7(e) of the Memorandum of Settlement dated 10.4.2002. Since already Clause 5(d) and 5(j) constituting major misconducts have been extracted, it is necessary only to extract the other misconducts which are minor in nature as per the Settlement:--

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

- (b) unpunctual or irregular attendance;
- (c) neglect of work, negligence in performing duties;
- (e) committing nuisance on the premises of the bank;"

It is only in cases of gross misconduct, an employee can be dismissed without notice or removed or compulsorily retired or discharged from service as per Clause 6 of the Settlement. In respect of an employee found guilty of minor misconducts, he can be warned or censured, or an adverse remark entered against him or his increment stopped for a period not more than six months.

59. The employee submitted an explanation to the charge memo on 12.3.2014 in which he denied having distributing the handbills either on 8.1.2014 or 10.1.2014. He also submitted that since he was the general secretary of SBI SC/ST Employees Welfare Association as well as Ambedkar Trade Union, he was sought to be victimised for his trade union activities and that he had put in 36 years of unblemished service. He further stated that the handbills referred to by them did not contain any derogatory remark against any officer of the bank. It merely wanted the bank to be protected from the corrupt officers and the details of those officers will be published by the union. Such a right of expression was fully guaranteed under Article 19(1)(a) of the Constitution.

60. Not satisfied with the explanation, the management appointed an Enquiry Officer by proceedings dated 2.4.2014. When the Enquiry Officer fixed the date of hearing, the employee S. Gunasekar filed a writ petition in W.P. No. 13601 of 2014 challenging the charge memo. Though the writ petition was admitted, no interim order was granted. Therefore, the employee kept on seeking adjournments on the ground of sickness. He actually went on sick leave, supported by the medical certificates issued by the panel doctor of the bank. Since the employee kept on extending his sick leave, the Chief Manager passed an order on 7.7.2014 rejecting the leave applications submitted for the period from 15.5.2014 to 18.7.2014 and treating the period of absence as unauthorized and directing him to report for duty.

61. Therefore, the employee S. Gunasekar came up with a writ petition in W.P. No. 19039 of 2014 challenging the said order dated 7.7.2014. But when the writ petition came up for hearing, the employee restricted the relief claimed in the writ petition. Hence, an order was passed on 18.7.2014 directing the management to consider the replies submitted by the employee and to pass appropriate orders within two weeks.

62. In pursuance of the order, the Chief Manager passed a detailed order dated 12.8.2014, rejecting the replies and refusing to refer his case to the Medical Board. Simultaneously, another order was passed on the same date, rejecting his applications for sanction of sick leave for the period from 15.5.2014 to 18.7.2014.

63. Challenging these orders dated 12.8.2014, the employee S. Gunasekar came up with a writ petition in W.P. No. 23060 of 2014.

64. In the meantime, the Enquiry officer proceeded ex-parte. In that enquiry, four witnesses were examined i.e. PW1 S. Kumar, Armed Guard, PW2 L. Charles, Control Room Operator, PW3 Ranjith Kumar, Mineral Water Supplier, and PW4 A. Soundara Pandiyan, Newspaper Vendor. All the four witnesses deposed in support of the charges 1 to 3. In respect of 4th charge, one PW5 Chief Manager, Chennai alone was examined to prove that the employee was unauthorisedly absent on 10.1.2014. No evidence was let in about the employee distributing handbills on 10.1.2014. However the Enquiry Officer submitted his report dated 16.8.2014 holding all the four charges proved.

65. According to the bank, the copy of the report was delivered to the employee on 19.8.2014, but he did not submit his objections to the report. Therefore, the Disciplinary Authority issued a memo dated 27.8.2014, directing the employee to appear for a personal hearing on 3.9.2014, to show cause as to why the proposed penalty of dismissal from service should not be imposed on him.

66. However, before a final order of penalty could be passed in the disciplinary proceedings, the writ petitions challenging the charge memo and challenging the order rejecting the sick leave applications namely W.P. Nos. 13601 and 23060 of 2014 were taken up together for final disposal by a Single Judge. By a common order dated 25.11.2014, the learned Judge partly allowed the writ petition challenging the charge memo, namely W.P. No. 13601 of 2014, and set aside the charges relating to the alleged violation of Sub-Clauses (d) and (j) of Clause 5 of Memorandum of Settlement dated 10.4.2002. But the learned Judge permitted the management to proceed with the enquiry relating to the remaining charges, which even if proved will only constitute a minor misconduct. In so far the other writ petition in W.P. No. 23060 of 2014 was concerned, the learned Judge closed the same on the ground that it was incidental and that no arguments were advanced on the same and also on the ground that the period mentioned therein was already over.

67. Challenging the order of the learned Judge partly setting aside the charge memo, the management of the bank filed a writ appeal in W.A. No. 1657 of 2014. It appears that in the first instance, notice was ordered in the writ appeal on 12.1.2015. Thereafter, on the ground that despite service of notice on him on 23.1.2015, the employee did not choose to appear, a Division Bench of this court passed an order on 2.2.2015 in W.A. No. 1657 of 2014, granting an interim stay of the order of the learned judge dated 25.11.2014 in W.P. No. 13601 of 2014.

68. It is not clear as to how the SBI can pass final order in the disciplinary

proceedings, especially when the main writ appeal challenging the order of the learned judge quashing the charge memo relating to Clause 5(d) and 5(j) of the Settlement and the appeal had not reached finality. An interim stay of the order of the learned Judge will not automatically restore status quo and considering the long drawn out legal battle between parties, the SBI ought to have waited for the final disposal of the writ appeal.

69. However, armed with the said order of interim stay, the management passed a final order dated 6.2.2015, imposing upon the employee, the penalty of dismissal from service. Challenging the dismissal from service, the employee came up with a writ petition in W.P. No. 3267 of 2015. While entertaining the said writ petition a learned Judge of this court granted on 9.2.2015, an interim order of injunction, restraining the management from giving effect to the order of the dismissal.

70. Aggrieved by the interim injunction granted by a Single Judge on 9.2.2015 in M.P.no.2 of 2015 in W.P.3267 of 2015, the management filed a writ appeal in W.A. No. 224 of 2015.

71. On 11.2.2015, the Division Bench directed W.A. No. 224 of 2015 to be tagged along with W.A. No. 1657 of 2014 and also granted an interim stay of the order of the injunction granted by the single judge.

72. In the meantime, the employee (S. Gunasekar) filed a writ appeal in W.A. No. 259 of 2015 challenging the dismissal of his writ petition W.P. No. 23060 of 2014, that arose out of rejection of his leave applications and the rejection of his request to refer him to the Medical Board before taking a decision on the fate of the sick leave applications.

73. Thus all the three writ appeals and one writ petition requires a common disposal.

74. However the Respondent SBI has filed a counter affidavit dated 23.3.2015 in W.P. No. 3267 of 2015 raising a preliminary objection regarding the maintainability of the writ petition relating to the disciplinary action. According to them the employee is a "workman" within the meaning of Section 2(s) of the I.D. Act and that only in terms of Section 11-A of the I.D. Act, an industrial tribunal can appreciate the entire facts and arrive at a just conclusion. It is contended on behalf of the management that the employee has got an efficacious alternative remedy to challenge his order of dismissal before an industrial tribunal and he has not made out an exceptional ground to invoke the jurisdiction under Article 226 of the Constitution.

75. We are unable to sustain this objection raised by the management. No doubt the employee can challenge his dismissal before the forums constituted under the Industrial Disputes Act. But in this case he has succeeded before the single Judge quashing the charge memos relating to charges under Clause 5(d) and 5(j) of the Memorandum of Settlement and that order is the subject matter of

adjudication in writ appeal No. 1657 of 2014 filed by the bank. Ultimately if this court has to hold that order of the learned Judge quashing some of the charges was legally correct, then the only scope for the bank would be to proceed against the employee for minor misconduct. In such an event, an individual employee cannot raise an industrial dispute under section 2-A of the I.D. Act. Further the bank has never raised this objection in the first round of litigation. The only contention raised in those three writ petitions which are the subject matter of the first three appeals was that the employee has no fundamental right to defame the bank. The question of alternative remedy was never raised by the bank at any point of time. At the tail end of this litigation, we are not prepared to allow the bank to raise such an issue especially when the contentions to be considered revolve around the fundamental rights of the petitioner.

76. The Supreme Court, in a similar occasion refused to allow a party to raise an objection regarding maintainability if the same was not done at the earliest point in a case relating to a nationalised bank. In *Radha Raman Samanta Vs. Bank of India and Others*, (2004) 1 LLJ 566 : (2003) 10 SCALE 10 : (2004) 1 SCC 605 : (2004) SCC(L&S) 248 : (2003) 6 SCR 1172 Supp , it was observed as follows:--

"On the earlier occasion when the matter was considered by the Division Bench the respondent-Bank did not raise any issue of alternative remedy or any question relating to non-maintainability of the writ petition. We may also notice that when such issues might and ought to have been raised but had not been done so, it must be taken that the Division Bench had rejected such contentions and the order of the Division Bench remanding the matter to the learned Single Judge was not carried in appeal and became final. Therefore, the learned single Judge was bound to address only on one issue upon which the matter had been remanded. Thus, the Division Bench could not have overlooked these facts in the appeal arising from the order of the learned single Judge on the second occasion after remand and need not have gone into the question as to whether the writ petition could have been entertained at all or not. Therefore, we are of the view that the High Court could not have overlooked these facts and interfered with the order of the learned single Judge."

Hence, considering the importance of the legal issues involved in these cases and considering that the charges for a major misconduct have already been quashed by the learned Judge forcing the management to come up with an appeal, we have no hesitation to reject the preliminary objections raised by the bank.

77. It is necessary to first examine whether the learned single Judge was right in holding that the allegations made against the employee even if proved will not attract clauses 5(d) and 5(j) of the Memorandum of Settlement constituting major misconducts. The learned single Judge held that invocation of Clause 5(d) was inappropriate as there was no damage or attempt to cause damage to the property of the bank or any of its customers. It is not the case of the Bank, as elaborated in the statement of imputations of misconduct that the term "property" appearing in clause 5(d) of the Memorandum of Settlement would

include even intangible assets such as goodwill and reputation, for the purpose of this settlement. It is significant to note that the bank did not invoke, and correctly so, Clause 5(b) relating to unauthorised disclosure of information regarding the affairs of the bank. Therefore the findings of the learned Judge with reference to Clause 5(d) do not require any interference.

78. In respect of the finding relating to Clause 5(j), it is necessary to examine the findings rendered by the learned single Judge. It will be worthwhile to extract para 10 from the judgment under appeal:

"10. It is not in dispute that the petitioner has made several complaints against the officials with respect to the mismanagement. One of the complaint given by the petitioner on behalf of the association has also been registered. A perusal of the handbills issued by the petitioner would show that no official has been named. It has been issued in order to protect the Institution. In other words, the intention of the petitioner is not to tarnish the image of the Institution and in any case there is no malafide intention to do so. Such an action cannot be termed as an activity which is prejudicial to the interest of the Bank. Therefore, based upon the admitted facts and the materials this Court is of the view that sub-clause (j) of clause 5 is also not made out. Of course, the matter would be different if the petitioner has made allegations against any of the officials by naming them. It is only a legitimate action to remedy the alleged malfunction in the organisation. The petitioner has never sought to ventilate his personal interest."

79. Even otherwise in respect of the posters published by the Petitioner for which disciplinary action was taken under the very same clauses of the settlement and which became subject matter of the first batch of the three writ appeals, we have extensively dealt with (in the beginning of this judgment), the scope of the misconduct and the relevant case laws and have rendered a finding against the bank. It is unnecessary to repeat the same. Suffice it to hold that the same findings will also enure to the benefit of employee. Hence writ appeal 1657 of 2014 filed by the Respondent SBI will stand dismissed.

80. In writ appeal 224 of 2015, the bank came up against an interim order passed by a learned single Judge in M.P. No. 2 of 2015 in W.P.3267 of 2015 granting an interim injunction restraining the bank from giving effect to the order dated 6.2.2015 wherein and by which the employee was dismissed from service. As against the said dismissal, the employee has filed W.P.3267 of 2015. Since the writ petition challenging the dismissal order of the employee itself has been taken up for final hearing, it is unnecessary to deal with the correctness of grant of an interim order in that W.P. and the consequential writ appeal filed by the management. Since the management of the bank had achieved their objective by getting an interim order from the division bench and all the matters between the parties are being finally disposed of by this court, writ appeal No. 224 of 2015 will stand dismissed as infructuous.

81. The learned single Judge disposed of the two writ petitions filed by the

employee i.e. W.P. No. 13601 of 2014 challenging the charge memo and W.P.23060 of 2014 challenging the refusal to sanction sick leave by a common order dated 25.11.2014. In the operative portion of the order, the learned Judge gave the following directions:--

"15. As discussed earlier, there is no controversy surrounding the facts. Though as a matter of rule, this Court is not required to interfere at the stage of the charge memo, considering the legal issue, sans the factual adjudication, the impugned order is interfered with. Accordingly, charges for the alleged violation of sub-clause (d) and (j) of clause 5 of Memorandum of Settlement dated 10.4.2002 are set aside. Insofar as the other charges with respect to leaving the working place after signing and without getting permission from the appropriate authority as well as unauthorisedly absenting without permission, they are not interfered with. Accordingly, the respondents are at liberty to proceed with the petitioner for the charges that would attract sub-clause 7(b), 7(c) and 7(e) of the Memorandum of Settlement dated 10.4.2002. In view of the order passed in first writ petition W.P. No. 13601 of 2014, no adjudication in the other writ petition W.P. No. 23060 of 2014 is required, more so, when no arguments have been addressed in that writ petition coupled with the further fact that the period mentioned therein is also over. Accordingly, the first writ petition W.P. No. 13601 of 2014 stands allowed in part and the other writ petition W.P. No. 23060 of 2014 is closed."

82. In so far as writ appeal 259 of 2015 filed by the employee is concerned, a ground is taken that since common arguments were addressed, the finding of the learned Judge that no arguments were addressed may not be correct. However, we do not want to accept the contention since the finding recorded by the learned Judge cannot be allowed to be controverted by the parties. Even in the summary of the arguments advanced by the counsel for the employee, there was no major attack found recorded in the judgment under appeal. It is no doubt true that denial of genuine sick leave will result in denial of wages which will also lead to civil consequences. But however, we give liberty to the employee to appeal to the Chairman of the Board of Directors of the Respondent SBI with sufficient materials seeking for grant of sick leave. If any such petition is submitted to the Chairman of the Respondent SBI, the same will be considered on merit and the decision will be communicated to the employee. To this extent we modify the order of the learned Judge in W.P. No. 23060 of 2014 dated 25.11.2014. Except to the extent indicated above, writ appeal No. 259 of 2015 will stand dismissed.

83. Once we find that the order of the learned Judge in W.P. No. 13601 of 2014 quashing the charges for alleged violation of sub-clauses (d) and (j) of clause 5 of the Memorandum of Settlement dated 10.4.2002 is perfectly valid, three consequences would flow out of the said finding. They are (i) that the writ appeal W.A. No. 1657 of 2014 filed by the Management of the Bank challenging the order of the learned Judge is liable to be dismissed; (ii) that the penalty of dismissal from service passed on 06.02.2015 is liable to be set aside, since the

said penalty has been imposed for the alleged acts of misconduct, two of which fall under the category of gross misconduct under clauses 5(d) and (j); and (iii) that the writ petition in W.P. No. 3267 of 2015 challenging the penalty of dismissal from service is liable to be allowed.

84. Apart from the above consequences that flow out of our agreement with the judgment of the learned Judge in W.P. No. 13061 of 2014, there is one more consequence. As we have pointed out earlier, four charges were framed against the petitioner in the writ petition. These four charges revolve around (i) unauthorised absence from the place of work, and (ii) distribution of pamphlets to the staff members and the general public, with a view to tarnish the image of the bank. These charges are indicated in the charge memo dated 19.02.2014 to tantamount to gross misconduct in terms of clauses 5(d), 5(j), 7(b), 7(c) and 7(e) of the Memorandum of Settlement dated 10.4.2002.

85. The Memorandum of Settlement dated 10.4.2002 shows that the acts complained of under clause 5 are stated to be "gross misconduct". But, all the acts listed in clause 7 are defined as minor misconduct. Therefore, all the four charges are traced in paragraph 2 of the charge memo to two acts of major misconduct and three acts of minor misconduct. Once the order of the learned Judge in W.P. No. 10361 of 2014 is upheld, the charge of gross misconduct traceable to clause 5(d) and 5(j) goes. Then, what would remain are only those acts of misconduct which fall within the definition of the expression minor misconduct under clause 7. Clause 8 of the Memorandum of Settlement provides only for three types of penalties, namely (i) warning or censure, (ii) entry of adverse remark, and (iii) stoppage of increment for a period not longer than six months. Therefore, the consequences of our upholding the order of the learned Judge would be that the disciplinary proceedings may survive for a fresh consideration only for the minor acts of misconduct indicated in clauses 7(b), 7(c) and 7(e), for which only a minor penalty under clause (8) could be imposed.

86. We are actually left with two options, namely either to uphold the findings in the ex parte enquiry in relation to these minor acts of misconduct and to allow Bank to impose any one of the minor penalties as stipulated in clause (8). Alternatively, we could ourselves impose a minor penalty taking into consideration the bad blood that has run between this trade union and the management.

87. We would prefer to exercise the first option, namely that of merely upholding the findings of the enquiry officer in relation to charges that are not quashed by the learned Judge, namely those charges that fall under clauses 7(b), 7(c) and 7(e) of the Memorandum of Settlement and allow the Bank to impose any of the minor penalties that they can impose under clause (8). This is in view of the settled position in law, as pointed out by the Supreme Court in *Kailash Paliwal Vs. Subhash Chandra Agrawal*, AIR 2013 SC 2923 : (2013) 2 RCR(Civil) 422 : (2013) 1 RCR(Rent) 361 : (2013) 9 SCC 372 , which was later referred to and followed in *The Life Insurance Corporation of India Vs. S. Vasanthi*, (2014)

AIRSCW 4908 : (2014) 9 SCALE 379 : (2014) 9 SCC 315 .

88. Therefore, in the result, W.P. No. 3267 of 2015 is allowed setting aside the order of penalty of dismissal from service and directing the bank to reinstate the writ petitioner with all consequential benefits including backwages. However, it will be open to the disciplinary authority to impose a suitable penalty in terms of clause 8 of the Memorandum of Settlement, for the acts of misconduct that now survive in relation to clauses 7(b), 7(c) and 7(e) of the Memorandum of Settlement.

89. In the result,

"(i) Writ Appeal Nos. 336, 356 and 357 of 2008 will stand allowed

(ii) Writ Appeal No. 224 of 2015 will stand dismissed as infructuous

(iii) Writ Appeal No. 259 of 2015 will stand dismissed with liberty to the petitioner to give representation.

(iv) Writ Appeal No. 1657 of 2014 will stand dismissed.

(v) Writ Petition No. 3267 of 2015 will stand allowed to the extent indicated above. The order of the dismissal dated 6.2.2015 will stand revoked with a further direction to the bank to reinstate the employee with all consequential benefits including back wages within 4 weeks. It will be open to the Bank to proceed further with the disciplinary action, by taking the charges under clauses 7(b), 7(c) and 7(e) as proved and to impose any of the penalties stipulated in clause 8 of the Memorandum of Settlement dated 10.4.2002

(vi) All miscellaneous petitions will stand closed.

(vii) The direction in para (v) will be carried out within four weeks from the date of receipt of the order.

(viii) The parties are allowed to bear their own costs."