
(2012) 09 GUJ CK 0048
In the Gujarat High Court
Case No : S.C.A. No. 5587 of 2000

Gujarat State Co-operative Development Bank Ltd.	APPELLANT
Vs	
Niranjanaben A. Pothiwala and Another	RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 227
Industrial Disputes Act, 1947 — Section 10, 33, 33(2)(b)

Citation : (2013) LLR 139

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Mitul K. Shelat with Ms. Vacha Desai, for the Appellant; A.K. Clerk, Advocate for Respondent No. 1 and Mr. Paritosh Calla Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties. The petitioner-first party employer Bank (hereinafter referred to as the employer Bank for sake of brevity) in Approval Application No. 15 of 1990 in Reference (I.T.) No. 303 of 1978 from the Industrial Tribunal, Ahmedabad, has approached this Court under Articles 226 and 227 of the Constitution of India, challenging the order dated 7.4.2000 passed by the Tribunal, rejecting the application for seeking approval for carrying out the order of punishment of dismissal passed by the Management pursuant to Disciplinary proceedings held against the respondent-workman.

2. The facts in brief leading to filing this petition as could be culled out from the record be set out as under:

The workman respondent hereinabove was an employee of the petitioner Bank. The workman was transferred to Bhuj, which transfer was assailed by the workman at the relevant time by preferring Civil Suit before the Civil Court. The workman was visited with charge-sheet dated 11.2.1988 in respect of his absence at Bhuj and his not reporting for duty despite non-sanction of his leave,

which workman had sought on account of pending challenge to the transfer order before the Civil Court. The workman filed his reply contesting the issuance of charge-sheet and competence of the authority to issue charge-sheet and justification for replying and sanctioning of his leave on account of accumulation of leave and other requests. The management issued another charge-sheet dated 13.4.1988, which was in respect of workman's working at Sankheda Branch of the Bank alleging non-observance of the provisions in advancing loan or sanctioning loan to farmers and other customers. These two chargesheets were followed by departmental proceedings in which, the workman, as per the say of management, did not participate and ultimately, charge-sheet containing the charges held to be proved, as a result whereof, the order of punishment came to be passed dismissing the workman from the services vide order dated 7.4.2000. As the Reference (I.T.) No. 303 of 1978 was pending before the competent Court, in continuation plea that the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act" for short), an Approval Application was required to be made on behalf of the bank as the punishment order was passed during the pendency of the valid reference. Accordingly, Bank filed an Approval Application being Approval Application No. 15 of 1990 in Reference (I.T.) No. 303 of 1978. The said application was filed on 14.5.1990 i.e., the date on which the punishment order of dismissal was passed. This application of bank was resisted by workman by filing detailed reply taking out grounds of non-competence of inquiry qua absenteeism and non-compliance of principle of natural justice and assailed the same on the ground of he being victimized on account of his action of challenging the Order of transfer before the Civil Court. This application was not accepted by the Industrial Tribunal and Tribunal vide its order dated 7.4.2000 rejected said application on the ground that the approval was not required to be granted to the order of punishment as there was breach of principles of natural justice and inquiry was held to be illegal and accordingly the application was rejected.

3. It is required to be noted at this stage that during pendency of this petition, on account of demise of respondent-workman, the legal heirs of respondent workman have been brought on record. The workman died on 13.1.2003, therefore, the petition survive qua the challenge and heirs right to receive the benefits of the litigation, which was successfully fought by the deceased workman till the petition was filed here. This Court vide order dated 17.7.2000, stayed the impugned award.

4. It is required to be noted at this stage that during the pendency of this approval application Exh. 37 application dated 26.2.1997 produced at page-92 of this compilation of the petition came to be made by the petitioner Bank for seeking permission to lead evidences in the event of Tribunal hold the inquiry to be illegal. This application was thereafter not adverted to in any manner by any one including Bank. The petitioner-Bank being aggrieved and dissatisfied on account of rejection of its approval application vide Tribunal's order dated 7.4.2000 preferred this petition under Articles 226 and 227 of the Constitution of

India on the ground mentioned in the petition.

5. Learned advocate appearing for the petitioner Bank invited this court's attention to the order impugned in this petition and contended that the Tribunal could not have held that there was illegality in conducting the inquiry against the respondent workman.

6. Learned advocate appearing for the petitioner Bank contended that the application Exh. 37 ought to have been taken into consideration by the Tribunal before rejecting the approval application as the applicant-present petitioner had made specific written request during the pendency of the approval application and when such a written application in form of application Exh. 37 was pending, the rejection of the approval application straightway without affording an opportunity to the petitioner Bank to lead evidence would vitiate the impugned order and therefore, on this ground, the order deserves to be quashed and set aside.

7. Learned advocate for the petitioner relying upon the decision of the Apex Court in case of Divyash Pandit Vs. Management, N.C.C.B.M., , contended that the Apex Court, as it has observed in para-8 of the" judgment, after referring to the decision in case of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, held that non-seeking of any leave or permission at the time of filing written statement or at the time of making approval application in itself would not work as embargo against the workman's power to permit the applicant bank to lead the evidence and in the instant case, when the petitioner Bank applied right from the recording of the testimony of the workman on 26.2.1997, the same could not have been overlooked by the Tribunal as the same has amounted to declaring the inquiry invalid or illegal and resultant action of punishment without affording an opportunity to the petitioner Bank to lead evidence to substitute (sic substantiate) the charges levelled against the delinquent workman.

8. Learned advocate appearing for the petitioner has relied upon the decision in case of State of Uttaranchal Vs. Sandeep Kumar Singh and Others, , submitted that the salutary principles of precedent may persuade this court to hold that non-affording an opportunity to the Bank for leading evidence was so fatal as to render the order impugned vitiated and on that ground, the same order be quashed and set aside and the petition be allowed.

9. Learned advocate for the petitioner has thereafter relied upon the decision in case of State of U.P. and others Vs. Nand Kishore Shukla and another, , contended that out of number of charges against the delinquent, even if the punishment order is sustainable on one charge, which has remained valid or which is said to have been proved, then also, the punishment order cannot be interfered with. In the instant case, assuming for the sake of argument without conceding that there was some room for questioning the conducting of inquiry in absence of delinquent and relying upon the statement together in absence of the

delinquent, so far advance of loan is concerned, the charge in respect of absenteeism and defiance of the workman in not reporting at the transferred place or place of transfer in itself was sufficient to sustain the punishment order as the workman's absence at the transferred place was undisputed and was accepted to be undisputed by the Tribunal also. The Tribunal having relying this fact, could not have overlook the same on the ground of so-called challenge to the competence of the inquiry officer or competence of mere proceedings without recording clear finding on this aspect. The order of the Tribunal, therefore, being unsustainable in eye of law, the same may be quashed and set aside.

10. The learned advocate for the respondent workman hereinabove invited this court's attention to the workman's reply produced on the record to the charge-sheet and contended that the workman has been making his grievance qua competence of inquiry right from the beginning and assailing the same on the ground that the initiation of inquiry and issuance of charge-sheet is triggered on account of his challenge to his transfer, to Bhuj. The proceedings u/s 33(2)(b) of the ID Act are to be viewed from the challenge made by the workman to conducting the inquiry right from the beginning itself.

11. Learned advocate for the respondent-workman thereafter invited this court's attention to the finding recorded by the Court, qua inquiry in respect of the illegality in advancing the loan to various clients and submitted that the finding recorded by the Court based upon the admission of the management witness in respect of recording of the statement in absence of delinquent and in absence of knowledge and information to delinquent with regard to proposed action of receding statement of third party, was sought to be patent illegal, dealing serious blow to the entire inquiry and hence, this being the findings based upon the appropriate appreciation of evidence, this court in exercise of jurisdiction under Articles 226 and 227 of the Constitution may not interfere with the same.

12. Learned advocate for the respondent workman thereafter invited this court's attention to the Tribunal's award and order and specifically emphasized the portion at page-105 in compilation in form of para-9 and submitted that this was in respect of the charge-sheet qua absenteeism and this contentions have rightly been appreciated by the tribunal as despite repeated grievance in form of submission, the employer choose not to lead any evidence nor did it bother to place on record the relevant material in form of orders justifying its retrospective power, questioning to conduct inquiry and to issue charge-sheet, when the very competence of very inquiry or power to initiate inquiry was questioned, the duty was cast upon the employer to make its case good and tribunal has rightly recorded its finding which may not be interfered with in this proceedings under Articles 226 and 227 of the Constitution of India.

13. Learned advocate for respondent workman contended that the aforesaid submissions were based upon the documents adduced at-page-85 and 87, in support of its submission, the counsel for respondent workman placed reliance upon the decision of Apex Court in case of Indian Overseas Bank Vs. I.O.B. Staff

Canteen Workers" Union and Another, . The emphasis was in respect of High Court exercising powers under Article 226 and scope of interference in respect of finding of fact recorded by the Court below. Relying upon this judgment, it was contended that the scope of exercising the challenge to the present impugned order may be guided and worked by the observation of the Apex Court in case of Indian Overseas Bank (Supra).

14. Learned advocate for the respondent workman thereafter invited this court's attention to Exh. 37 application filed by the Bank and submitted that the application for approval, was made on 14.5.1990 and admittedly, in this approval application, no liberty was reserved or no request was mentioned that in case if the Tribunal comes to the conclusion that the inquiry was illegal, then, in that case, the employer be granted an opportunity to lead evidence. The application Exh. 37 is filed 7 years thereafter i.e., on 26.2.1997, that too, has not been persuade to Its logical end. Thus, in the first instance when the employer chooses not to pursue the first plausible opportunity to seek such plea or reserved its right at the first instance by way of making alternative plea, then on account of observation of the Apex Court in case of Divyash Pandit (supra), no new case could be made out to be permitted nor could be same be of any avail to the petitioner Bank.

15. Learned advocate for respondent workman relying upon the decision of the Constitutional Bench in case pf Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidevamma and Another, , contended that ratio decidendi of Shambhunath case i.e., Shambhu Nath Goyal Vs. Bank of Baroda and Others, , was in terms approved and declared to be a good law by the majority and part of the majority making further observation qua court's unfettered power to call for the evidences at any stage on being satisfied for calling the same, need not be construed as absolving the employer of its preliminary and basic requirement of assailing the opportunity of making appropriate pleading and seeking appropriate liberty, as it is observed in the case by the Apex Court. The decision in case of Divyash Pandit (supra), which deals with the court's power cannot be profitably relied upon by the employer to sustain its plea qua so-called denial of opportunity to lead evidence for assailing the judgment impugned in this petition.

16. Learned advocate for respondent workman re-lying upon the decision in case of Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, , contended that ratio decidendi of the judgment, would not permit the petitioner to assail the decision of the Industrial Tribunal on account of non-opportunity to the employer despite its application Exh. 37.

17. The learned advocate appearing for the respondent workman thereafter relied upon the decision of Karnataka High Court in case of Elastrex Polymers Pvt. Ltd. Vs. Sri Janardhana , contended that the scope of jurisdiction being exercised by the Court while examining the application u/s 33(2)(b) of the ID, Act, is well defined and is restricted as the said judgment refer to judgment of the Apex Court in case of Martin Burn Ltd. Vs. R.N. Banerjee, , in case para-3

and case of Cholan Roadways Limited Vs. G. Thirugnanasambandam, , in para-4 of the case. The scope of examination of the application u/s 33(2)(b) of the I.D. Act was restricted and it can never be equated with adjudication u/s 10 of the I.D. Act and therefore, the elaborate submission qua the challenge to the order would amount to enlarging the scope of jurisdiction itself.

18. Learned advocate for respondent workman re-lying upon the decision of the Apex Court in case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , contended that the Apex Court has clearly provided the effect of rejection of approval application and/or lack of any attempt to seek approval, which is said to be the workman being continuous in employment and relationship was treated to never have been snapped on account of order of punishment, which did not receive approval from the competent court. Therefore, in the instant case, the workman was entitled to receive all the benefits as if impugned order of punishment had never been passed and the court may therefore, reject the petition and pass appropriate order in view of the decision of the Apex Court in case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (Supra).

19. This court has heard learned advocates for the parties and perused the proceedings in detail. Before advertng to the rival contentions of the learned advocates for the parties, it is most expedient to here in below set out the indisputable aspects emerging therefrom:

(I) The facts remains to be noted that the issuance of two charge-sheets namely charge-sheet dated 11.2.1988 and charge-sheet dated 13.4.1988 preceded by transfer order of the workman transferred from Halol to Bhuj This transfer was as per the say of the workman brought about on account of mala fide intention of employer and for no fault on the part of the workman as he was never posted to work as an agent and the person who has worked as an agent namely Shri Patel, was to work as an agent and was the person as Supervisor and he has to assist Shri Patel. Therefore, this transfer order was assailed by the workman by preferring Civil Suit in which initially some interim orders were passed, which were later on vacated and suit was continuing as per the say of workman.

(II) The workman's request for leave, which would have permitted him to remain at a place to be pursuant to his civil suit, was not sanctioned despite workman having sufficient leave in his balance, thought the workman could not show that management did not have any right to reject leave application, on the contrary, workman's right to leave despite leave being in his account cannot be questioned but the peculiar facts of the present case have been highlighted by workman time and again and therefore, workman has been all through making grievance with regard to non-reply to his contention that there was no justification for denying him leave, which was available in his account.

(III) The workman was issued charge-sheet on 11.2.1988 containing allegation that workman remained unauthorized absenteeism as his leave had not been sanctioned and not reporting for duty would amount to remain unauthorized

absenteeism, which would hit by provisions of Disciplinary Appeal Rules. This charge-sheet was replied by the workman as evident on the record.

(IV) The inquiry proceedings had not been initiated and after lapse of two months and as per the say of workman, when the competence of issuance of charge-sheet dated 11.2.1988 was very much assailed by the workman on valid ground, the further act of victimization, he was visited with one more charge-sheet in form of charge-sheet dated 13.4.1988, which was in respect of advancing of loan without taking into consideration the parameters of distance to the farmers and others, alleged to have been committed, is done as agent of the Bank at Sankheda.

(V) This charge-sheet is dated 13.4.1988 and workman had brought on record his reply in which, it was specifically contended that earlier charge-sheet dated 11.2.1988 was not acted upon in any manner, which amounted to acceptance of reply of the workman. However, after a period of about one year, the same charge-sheet was attempted to be persuaded further by way of appointing inquiry officer, who required to be changed and again inquiry officer was appointed and changed as many as three times.

(VI) The workman has brought on record that his request and demand qua furnishing to him the valid resolution retrospectively empowering the initiation of inquiry, had remained unheeded.

(VII) The petitioner Bank has contended that the inquiry was to proceed ex-parte, as workman did not cooperate despite sufficient opportunity granted to him.

(VIII) The inquiry proceedings ultimately culminated into an order of punishment of dismissal came to be passed on 14.5.1990 and as the Reference was pending being Reference (I.T.) No. 303 of 1978, the Bank preferred an application on the very same day for seeking approval for compliance with Section 33(2)(b) of the ID. Act.

(IX) The workman's testimony was recorded on 26.2.1997 and matter was further adjourned to a date in the month of March, 1997 and fact remained that on 26.2.1997, the application in form of Exh. 37 came to be filed and that application thereafter was not persuaded in any manner.

(X) Learned counsel for the workman has invited this court's attention to the recording by the tribunal in its order in respect of the closer purshis and the closing of evidence by both the sides and oral submission and their conclusion by both the sides and it was contended that despite this clear opportunity available to invite court's order on the application either way, the non-inviting of the order or not availing of the opportunity, may be treated as petitioner being abandoning its prayer for permission to lead the evidence, as fact remains that no orders were invited despite many opportunities were available during the course of hearing of approval application. The Tribunal has recorded in its finding qua lack

of any evidence or attempt on the part of petitioner Bank in demonstrating the contention of the workman qua retrospectively empowering the authorities so far as charge and proceedings qua absenteeism is concerned.

(XI) The findings recorded by the Tribunal qua charges on the proceedings pursuant to the charge-sheet dated 13.4.1988, in respect of advancing of loan at Sankheda, as could be seen from the findings itself, based upon the testimony of the management's witness that the recording of statements of those farmers were in absence of specific notice to the delinquent and therefore, the Tribunal came to the conclusion that those statements could not have been made base for recording conclusion or else, as it is without affording any opportunity to the delinquent against whom the proceedings were going on. The non-participation of the delinquent and non-serving of the notice on that count is not pleaded anywhere though a faint attempt is made to indicate such a course but when the management witness was being cross-examined by the representative of the workman, he made submission, which conclusively go to show that there was serious infringement of the principles of natural justice, which affected the inquiry proceedings.

(XII) The learned counsel appearing for the petitioner Bank could not indicate any material or pursue this court to hold contrary to what is observed by the Court at first instance i.e., Tribunal. The court hastened to add here that question with regard to this court's scope of examining and appreciating this submission is of course lurking at large but assuming for the sake of examination without holding that the court may undertake an exercise to satisfy itself, then, even in such a situation also, the petitioner's counsel has not pointed out any material and/or any document, which would lead some credence to the claim of compliance with the principles of natural justice.

(XIII) Learned counsel for the respondent workman has invited this court's attention to page 108 with regard to no information qua the proceedings impugned, are absolutely correct as relevant documents are also not coming forward, as Tribunal has in terms observed by referring dates.

(XIV) it is also required to be noted that apparent discrepancy in report of the Inquiry Officer and the lack of appropriate explanation on the part of petitioner were taking into consideration, as court for its satisfaction, called records and proceedings from the concerned Tribunal and even after perusing those documentary evidences, the discrepancies to dates supporting the findings that statements of the farmers were recorded without notifying the fact or that the statements are going to be recorded without affording any opportunity to the delinquent and those statements have been taking into consideration for basing the conclusion of charge being proved against the delinquent.

20. Against the aforesaid backdrop of almost indisputable aspects, the Court is to examine the rival contentions of learned counsel for the parties. The fact remains to be noted that the petition is though styled to be petition under Article 226 of

the Constitution of India also, it remains to be predominantly a petition under Article 227 of the Constitution of India only. The Industrial Tribunal is though joined by way of amendment in the year 2012, but that in itself should not be a deciding factor to bring the petition within the purview of Article 226 of the Constitution of India, as the essential ingredients so as to validly invoking Article 226 jurisdiction is conspicuously absent in this petition. The tenor of the petition and submission canvassed on behalf of the petitioner and mentioning of Article 141 of the Constitution of India clearly indicate that the attempt was to assail the order impugned essentially and predominantly on the ground of tribunal's non-affording any opportunity to the employer for leading any evidence, once the Tribunal recorded its findings qua illegality of the proceedings. This submission is sought to be made good on heavy reliance upon the observation of the Apex Court in case of Divyash Pandit (Supra). The court is unable to accept the submission canvassed on behalf of the petitioner as the findings recorded by the Tribunal are finding of facts and requirement of affording an opportunity to the employer for leading evidences was not persuade and rather the development of events during the course of hearing of the Reference including the factum of belated challenge to application and not pursuing the same to its logical end would militate against the submission qua non-opportunity of leading evidence, vitiating the judgment impugned in this petition.

21. In fact the court is of the considered view that law laid down by the Apex Court in this regard is eloquently clear. As could be seen from the decision of the Apex Court in case of Karnataka State Road Transport (Supra), learned counsel for respondent workman is justified in submitting that the view expressed by the Hon'ble two Judges of the Supreme Court recorded by them in paras 44 and 45, cannot be contended to be view of the majority as such the majority view in Karnataka State Road Transport (Supra) was declaring that the decision of the Apex Court in case of Shambhu Nath Goyal (Supra) was a good law did not require any further change in it and that being a good law, the subsequent additional observations made by Hon'ble 2 Judges of the Apex Court in paras 44 and 45, do not effect the ratio that the earliest opportunity available for seeking or praying to lead evidence is either the written statement or the approval application itself.

22. The observations of the Apex Court in case of Shambhu Nath Goyal (Supra) would be the most appropriate to be set out so as to appreciate the submission canvassed on behalf of the workman, The following para 16 of said judgment in unequivocal terms Indicate the ratio, which is reaffirmed by the majority in Karnataka State Road Transport (Supra) and observations of the Hon'ble 2 judges of the Apex Court in that matter in paras 44 and 45 would not in any manner create any additional right in favour of employer, which has otherwise, missed an opportunity of praying the permission for leading evidences.

Para-16: We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to

adduce further evidence to substantiate the charge or charges framed against the workmen referred to in the above passage is the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission u/s 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management u/s 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose Without any unreasonable delay. But when the question arises in a reference u/s 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before "it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.

In the instant case, the glaring facts needs to be borne in mind would go to show that the learned counsel for the petitioner Bank is not justified in assailing the judgment of the Industrial Tribunal on this count at all. The Approval Application is dated 14.5.1990. The order of punishment is also of the even date and as many as 7 years; had gone by before a prayer in the form of Exh. 37 application came to be made. It is also pertinent to note at this stage that the approval application is unfortunately silent qua any such prayer and therefore, one may safely conclude that for the first time, after the lapse of 7 years" period, it occurred to the employer to submit an application in form of Exh. 37, that too after or during the testimony of the workman being recorded. So this delay has remained unexplained, nor as there any attempt to advert to delay or explanation to delay in said application Exh. 37, A cryptic worded one page application, which was not persuaded to its logical end, cannot be permitted to be a made ground for otherwise well reasoned award and order containing finding in respect of patent breach of principles of natural justice and illegality of the proceedings.

23. The Apex Court speaking through two Judges in paras 44 and 45 of the judgment in case of Karnataka State Road Transport (Supra) did not in any manner deviate or whittle down the ratio but they acknowledged the court's power to call for the evidence on recording its satisfaction for doing the same. In

the instant case, it is not even the case of employer petitioner that after having missed the opportunity, the employer is attempting to justify their attempt to lead evidence and has relied upon decision of the Apex Court in case of Divyash Pandit (Supra), a broad submission is canvassed, which in my view would be of no avail to the petitioner.

24. The decisions cited at bar on behalf of the workman in case Elastrex Polymers Pvt. Ltd., Bangalore, rep. by its Manager, Production (supra) also would help the workman that the scope of inquiry before the Tribunal so far as the scope of approval is concerned, was limited and in that limited scope, when the opportunity, which was required to be availed is not availed and when having made application, even belatedly, is not pursued to its logical end, then in such a situation, the Tribunal not exercising power of its own accord in affording opportunity is to lean a submission to be accepted so as to interfere with the well reasoned order passed in proper exercise of the powers conferred upon the Tribunal under the provisions of the I.D. Act.

25. The other decision in case of State of Uttaranchal v. Sandeep Kumar Singh and others, (supra) is also of no avail to the petitioner as this court is of the considered view that it is not case where the punishment order on one charge could have been sustained. The Tribunal's finding qua no evidence or no attempt to demolish the conduct of the workman qua absenteeism and competence of the inquiry have persuade the court not to hold in favour of the employer on that count and as it is stated hereinabove, which is reflected hereinbelow even at the stage of maintaining this petition under Article 227, no attempt is made out to justify with the help of Rules, Regulations and Resolution that the inquiry in respect of absenteeism referring of charge-sheet dated 11.2.1983 was in accordance with the provisions. Therefore, on this ground also, it cannot be said that even the charge of absenteeism is required to be said to have been proved. Tribunal's finding qua this proceedings are also not shown to be perverse in any manner. Therefore, the reliance placed in the decision of the Apex Court reported in case of State of U.P. and others v. Nand Kishore Shukla and another, (Supra) is of no avail to the petitioner, The development of point in respect of availing opportunity at belated stage by the employer is now no more res-integra so as to detain this court any more and suffice it to say that the order impugned does not call for any interference in exercise of powers under Article 227 of the Constitution of India.

26. So far petition under article 226 of the Constitution of India, the court has already recorded hereinabove that there is no ground made out for invoking article 226 of the Constitution of India.

27. In the result, the petition being bereft of merits, deserves rejection and is rejected accordingly. It goes without saying that in view of the ratio of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopai Sharma and others, (supra), it is made clear that the workman was required to be treated as if he is in continuous service and on that basis, the benefits available and accrue, would be paid to the

heirs of workman as soon as possible without further delay. With this observation, the petition is dismissed. Rule is discharged. Interim relief stands vacated. No costs.