

(1990) 05 MAD CK 0004
In the Madras High Court

Indian Bank

APPELLANT

Vs

R.S. Thiruvengadam and Another

RESPONDENT

Date of Decision : 02-05-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Income Tax Act, 1922 — Section 5(7A)
Industrial Disputes Act, 1947 — Section 33(c)(2)
Tamil Nadu Shops and Establishments Act, 1947 — Section 41(2)

Citation : (1990) 2 MLJ 324

Hon'ble Judges : Kanakaraj, J

Bench : Division Bench

Judgement

Kanakaraj, J.—This writ appeal filed by the Indian Bank, a bank nationalised under the Banking Companies (Acquisition of Undertakings)

Act, 1970 poses a challenge to the Bench and the Bar. Whether we rise up to the occasion and meet the challenge, within the four corners of law,

will be seen only when we conclude the judgment.

2. The first respondent was working as a Shroff in the Rasipuram Branch of the Appellant Bank. On 17.5.1972 one Sanjeevi acting on behalf of

his wife Dhanalakshmi gave a complaint addressed to the Agent of the Rasipuram Branch of the appellant Bank. The gist of the complaint was that

Dhanalakshmi was holding an R.P. Account. bearing No. C-51, that Sanjeevi gave the first respondent a sum of Rs.250 per mensem from

December, 1968 to January, 1972 to be deposited in the R.P. account of his wife, that when the complainant was desirous of getting a loan from

R.P. Account, he learnt that the amounts had not been deposited and when the first respondent was called for and questioned, he had admitted

that the deposit was made only for seven months and for the balance of 32 months, the amount totalling to Rs.8,000 had not been deposited in the Bank and that the same had been utilised for his family expenses. The first respondent is said to have promised that the amount will be repaid in instalments of Rs.200 per month. The complainant prayed for action to recover the total sum of Rs.9,570 being the amount meant for depositing in her C-51 account. By a letter dated 7.6.1972, the first respondent was asked by the appellant to show cause as to why disciplinary action should not be taken against him for two acts of misconduct. The first related to the complaint of Sanjeevi given on behalf of Dhanalakshmi and the second related to the alleged false entries made in the pass book of Dhanalakshmi in respect of instalment Nos. 8 to 13 when as a matter of fact, the said instalments had not been received by the bank. On the same day, the first respondent was placed under suspension with immediate effect. The first respondent wrote a letter on 13.7.1972, being his earliest reaction to the charge, stating that he had borrowed money from Sanjeevi and had agreed to repay the loan in instalments by remitting the instalments in the RJP.Account of his wife Mrs. Dhanalakshmi. He did deposit for a few months and he could not continue the deposit and had told Sanjeevi about his inability to continue the deposits. He had agreed to repay the loan to Sanjeevi after some time and Sanjeevi had agreed to the proposal. The first respondent denied the second charge seeking detailed particulars about the charge. He also prayed for lifting the order of suspension. By letter dated 28.7.1972, the appellant wrote to the first respondent that he was not entitled to any further materials at mat stage and an opportunity will be given to peruse all documents at the time of the enquiry. The first respondent again wrote on 29.7.1972 denying the charges and praying for the lifting of the appellant framed two charges and concluded that the said charges, if proved, will amount to major misconduct as per 29.5.(j) of the Bipartite settlement. An enquiry officer was also appointed. On 11.10.1972, the enquiry commenced and three witnesses were examined on the side of the Appellant-Bank and five documents were marked in support of the charges. On 27.6.1973, the Enquiry Officer submitted his findings, holding that the first charge alone was proved and the-second charge relating to the entries in the passbook had not been made out. On 2.8.1973, the second show-cause notice against the proposed

punishment of discharge from service was issued. The first respondent gave his explanation to the second show-cause notice on 1.9.1973. By an order dated 22.11.1973 the Disciplinary Authority discharged the first respondent from service with immediate effect. The first respondent filed an appeal to the General Manager of the Appellant bank and the same was dismissed on 20.3.1974.

3. Thereafter, the first respondent filed an appeal T.S.E. case No. 34 of 1975 u/s 41(2) of the Tamil Nadu Shops and Establishment Act, 1947

(hereinafter referred to as "the" Shop Act) seeking to set aside the order of discharge dated 22.11.1973. The appellant contested the appeal on

merits but did not raise any objection as to the jurisdiction of the second respondent who was the authority prescribed for hearing appeals u/s

41(2) of the Shop Act. Had the appellant raised the plea of want of jurisdiction on the part of the second respondent, the complexion of the entire

case would have been different. Suffice it to say at this stage that the second respondent by an order dated 4.11.1978 held that the order of

discharge dated 22.11.1973 was not supported by any satisfactory evidence adduced at the enquiry. He, therefore, set aside the order of

discharge dated 22.11,1973.

4. The appellant filed Writ Petition No.4670 of 1979 before this Court challenging the order of the Second respondent, solely on the ground that

the order of the Second respondent is vitiated by perverse findings. There is no whisper in the writ petition about the second respondent lacking

jurisdiction to hear the appeal u/s 41(2) of the Shop Act. The Second respondent filed a counter affidavit and the learned single Judge of this Court

dismissed the writ petition on 21.1.1983. The learned Judge records that the order of the second respondent was challenged mainly on the basis of

appreciation of evidence adduced at the time of enquiry and the appellant authority having accepted the case of the first respondent, there was no

case made out for interference under Article 226 of the Constitution. The present writ appeal was filed on 26.4.1983. All the grounds of appeal

relate only to the factual findings and do not attack the jurisdiction of the second respondent u/s 41(2) of the Shop Act. It is unfortunate, again, that

the appeal was not brought up for admission immediately and there was a delay of 606 days in representing the appeal. The first respondent filed a

claim petition C.P.No.58 of 1983 u/s 33(c)(2) of the Industrial Disputes Act for recovery of the monetary benefits arising out of the order of the

Second Respondent. The appellant filed petitions C.M.P. 3752 and 3753 of 1986 to stay the operation of the order of the 2nd respondent in

T.S.E. Case No. 34 of 1975 and to stay all further proceedings in C.P. No. 58 of 1983 respectively. The petition to condone the delay of 606

days in representation was however ordered on 10.3.1986. It was only on 12.3.1986 that a petition C.M.P. No. 4194 of 1986 seems to have

been filed for raising additional grounds where for the first time the objection is taken that the appeal filed by first respondent before the second

respondent u/s 41(2) of the Shop Act is totally without jurisdiction because the appellant bank is an establishment under the Central Government

and therefore exempt from the Shop Act, by virtue of Section 4(1)(c) of the Shop Act. On 20th March, 1986, the writ appeal was admitted by

this Court, after granting permission to raise the above additional grounds. On the same day, interim stay was granted 4(a) in C.M.P. Nos. 3752

and 3753 of 1986. It is now relevant to mention that on 15.6.1983, a learned single Judge of this Court in Union Bank of India and Others Vs.

Additional Commissioner for Workmen's Compensation and Others, laid down that the Bank of India, a nationalised bank was an establishment

under the Government of India with reference to Section 4(1)(c) of the Shop Act, which means the said bank will fall outside the purview of the

Shop Act. On 18.4.1984, a Division Bench of this Court in C.V. Raman and Others Vs. Bank of India and Others, held that nationalised banks

are, establishments under the Central Government and therefore are exempt from the Shop Act. It will thus be seen that the appellant Bank had not

only raised the plea of want of jurisdiction at any time before 12.3.1986 but has also failed to take note of the decision of this Court on 15.6.1983

in Union Bank of India and Others Vs. Additional Commissioner for Workmen's Compensation and Others, In Rathikanthammal Vs. B.

Pankajammal and Another, the view taken by this Court in Union Bank of India and Others Vs. Additional Commissioner for Workmen's

Compensation and Others, and in C.V. Raman and Others Vs. Bank of India and Others, have been confirmed by the Supreme Court of India in

clear terms. The following lines in the judgment of the Supreme Court are extracted below for the purpose of our guidance:

In this view of the matter we are of opinion that no exception can be taken to the view of the Madras High Court in its judgments which are the subject-matters of Civil Appeal Nos. 4291-4292 of 1984, 4735 of 1984 and 4329 of 1984.

The Supreme Court of India then proceeded to set aside the decisions of the Kerala High Court and the Andhra Pradesh High Court holding to the contrary. The Supreme Court, therefore, has laid down the law in clear terms that the State Bank of India and the Nationalised Banks are establishments under the Central Government and therefore under Sub-section (1) of Clause (c) of Section 4 of the Shop Act, they are exempt from the application of the Act.

5. If the plea of want of jurisdiction in the second respondent on the ground that the Shop Act does not apply to the appellant bank, had been taken at the earliest point of time i.e., when the appeal was filed before the second respondent in the year 1974 and the plea had been rejected on the basis of any prevailing judgments of the High Courts or the Supreme Court, then it would have been a different matter. The appellant may then have a cause of action to say that the Courts have taken a different view subsequently and therefore, he is pressing the plea of jurisdiction. If the appellants had themselves assumed that even a nationalised bank will come within purview of the Shop Act, then they have to suffer the consequences. This is because, if the plea of want of jurisdiction had been raised before the second respondent, it may be that the first respondent might have realised the force of the contention and resorted to alternative remedies." To this extent, the first respondent has definitely been prejudiced. After nearly 17 years and after the first respondent had succeeded before the second respondent as well as before learned single Judge of this Court, without the question of jurisdiction having been debated, it would be most improper and inequitable on the part of this Court to tell the first respondent that he has to challenge the order of discharge dated 22.11.1973 in some other forum. In other words, to set the clock backwards and go back to the date viz. 22.11.1973, the date of discharge of the first respondent from service and push the first respondent back to square one does not appear to be fair and at any rate it does not amount to advancing the cause of justice.

6. It is in this background that we proceed to analyse the authorities cited before us and to see how far they enable us to render justice to the parties, exercising jurisdiction under Article 226 of the Constitution of India.

7. Mr. G. Venkataraman, learned Counsel appearing for the appellant, cites before us the decision in *P.C. Damodaran v. The Regional Manager,*

Food Corporation of India, Madras and Anr. 1986 W.L.R. 322. In that case, the worker was relieved of his duties from 6.9.1967. He

approached the Appellate Authority u/s 41(2) of the Shop Act. The Appellate Authority under the Shop Act held that the termination was valid;

but directed payment of wages in lieu of notice to be given. A learned judge of this Court affirmed the Order of the said authority exercising

jurisdiction under Article 226 of the Constitution of India. A writ Appeal under Clause 15 of the Letters Patent was filed by the workmen. It was

at that stage that the Food Corporation of India, the management in that case put forward the plea that the authority under the Shop Act had no

jurisdiction. There was no arguments on the question whether the Food Corporation of India could raise the plea of want of Jurisdiction at the writ

appeal stage. The Division Bench assumed that the plea can be raised and accepted the plea. Therefore, this judgment does not lay down any ratio

that the plea of want of jurisdiction can be raised at any stage. It is well known that only if the point is canvassed before the Court and a judgment

rendered, it will amount to laying down a principle. Mere conclusions cannot amount to ratio binding on other Courts. No Authority is necessary

for our view but a reference may be made to the decision reported in *S.P. Gupta Vs. President of India and Others*, .

8. The next decision cited before us is in *Central Bank of Commerce (Nationalised Bank) Formerly the Oriental Bank of Commerce Ltd. Madras,*

Represented by its Senior Manager v. The Commissioner of Labour Madras-6 1985 T.L.N.J. 68 (Writ Appeal No.228 of 1982. dt.

11.12.1984). In that case, the services of a Branch Manager were terminated and he filed an appeal u/s 41 of the Shop Act A question was raised

whether the Branch Manager was an employee under the Shop Act and the authority decided u/s 51 of the Shop Act that the Branch Manager

was an employee. That decision was challenged in this Court under Article 226 of the Constitution. By an order dated 9.3.1982, the decision was

confirmed. An appeal was filed under Clause 15 of the Letters Patent In the writ appeal, C.M.P. No. 8594 of 1984 was filed seeking permission

to raise an additional ground that the Shop Act will not apply to the appellant bank which had been nationalised on 11.7.1980. The plea was

allowed to be raised and following the Division Bench judgment of this Court in C.V. Raman and Others Vs. Bank of India and Others, it was held

that the Shop Act Authority had no jurisdiction. Here again there was no objection to the plea of want of jurisdiction being taken at the writ appeal

stage. For the reasons already indicated, this decision does not help the appellant to say that the additional grounds can be permitted to be argued

at the appeal stage, irrespective of the facts and circumstances of a given case and the effect such a plea can have on the case of the parties.

9. The next decision cited by the learned Counsel for the appellant is in S. Joginder Singh Vs. Nirmal Naini Mehra and Others, . That case relates

to an order of eviction passed under Clause (i) of the proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 and whether

the same was in violation of Section 14(10) of the said Act and therefore, a void order incapable of execution. Section 14(1) of the said Act

imposed a bar for eviction on the ground of causing or permitting to be caused substantial damage to the demised premises, unless the tenant failed

to carry out repairs to the satisfaction of the Controller. The Court held that the said bar was mandatory in nature and made in the interest of the

public at large and cannot be waived, for the order of eviction made without complying with the conditions was one without jurisdiction and hence

it is not executable. The Court in that case was concerned with the question whether a party can waive the advantage given to him under the law

and held that he cannot waive because the statute was mandatory and made in the interest of the public. We fail to see how this judgment helps the

appellant because we are concerned with a question whether after nearly 17 years without raising the question either before the Shop Act

Authority or before the learned single Judge of this Court or even in the grounds of appeal, the appellant can be permitted to raise it now causing

great prejudice to the first respondent. We will also proceed to discuss the decisions cited by Mr. Venkataraman and his arguments in reply in the

arguments of Mr. N.G.R. Prasad, appearing for 1st respondent, Mr. Venkataraman, cited the decision in A.S.T. Arunachalam Pillai Vs. Southern

Roadways (Private) Ltd., . The Passage referred to by Mr. Venkataraman is as follows:

In our opinion, although the respondent had submitted to the jurisdiction of the Regional Transport Officer and had not in his petition under Article

226 in the High Court taken the objection that that Officer had no jurisdiction to vary the conditions of a permit, the High Court acted rightly in

allowing the respondent to urge that the Regional Transport Officer had no jurisdiction to vary the conditions of a permit. It was not until the

decision of the High Court in Writ Appeal No. 107 of 1955 that it became the considered view of that Court that the Regional Transport Officer

had no jurisdiction to make any such variation. When the law so declared by the High Court it could not reasonably be said that the High Court

erred in allowing the respondent to take this point although in its petition under Article 226 the point had not been taken. This was obviously

because the decision of the High Court in Writ Appeal No.107 of 1955 had not been given at the time of the filing of the petition. Since the

question went to the root of the matter and it involved the question whether the Regional Transport Officer had jurisdiction to vary the conditions of

a permit, the High Court faced with a Division Bench decision of its own on the matter, could not very well refuse permission to the respondent to

rely on that decision in support of its petition questioning the validity of the order of the Government of Madras made u/s 64-A of the Act.

We will refer to this decision a little later.

10. So far as the order of Nainar Sundaram, J. in K.S. Gurumurthy v. The Additional Commissioner for Workmen's Compensation-II, Madras-6

and Anr. (1987) I MLJ 335 is concerned, the comment of Mr. Venkataraman is that the learned Judge has proceeded on the footing that the

order of the Shop Act Authority is voidable and not void and that being the position the exemption u/s 4(1)(c) of the Shop Act was applicable and

rendered the order of the appellant void and the inaction of the appellant to raise the ground of lack of jurisdiction was immaterial. With reference

to Pannalal Binjraj Vs. Union of India (UOI), the argument is that the transferee Income Tax Officer had jurisdiction to decide the case and the

observations of the Supreme Court relied on by the first respondent have to be looked at only from that angle. But we have to point out that the

Supreme Court in that case had rejected all the arguments advanced on behalf of the assessee relating to violation of Article 14 of the Constitution

and in the process held that the transferee Income Tax Officer had Jurisdiction. By way of additional ground, the Supreme Court non-suited the

assessee that in any event that had submitted to the jurisdiction of the transferee Income Tax Officers. In other words, the Supreme Court made

these observations assuming that the transferee Income Tax Officer had no jurisdiction, and held that the assessee should fail because they had

submitted to his jurisdiction. Similarly, Mr. Venkataraman, learned Counsel appearing for the appellant Bank argues that the judgments in

Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, , cannot advance the case of the first

respondent because there was no question of want of jurisdiction in that case. The learned Counsel also cites the decision in Kiran Singh and

Others Vs. Chaman Paswan and Others, and Suman v. Vithal Rama Power ILR (1986) Kar 273 and argues that where there is total lack of

jurisdiction and the authority lacks inherent jurisdiction to decide the matter, no amount of waiver or acquiescence will validate the order of the

authority. Mr. Venkataraman has also drawn our attention to the concluding portion of C.V. Raman v. Bank of India (1988) L.L.J. 423 holding

that all orders under the various shop Acts involved in that case must be held invalid and the parties given liberty to take recourse to such other

remedies as may be available to them in law.

11. As against the arguments of the learned Counsel appearing for the appellant that the plea of want of jurisdiction being one which goes to the

root of the case and therefore, should be permitted to be pleaded and considered even at this late stage, Mr. N.G.R. Prasad, learned Counsel

appearing for the first respondent cites the following decisions. We will consider the authorities cited by Mr. N.G.R. Prasad, learned Counsel

appearing for the first respondent not in the order in which they were cited but according to the chronological order starting from the earliest

judgment.

12. The earliest judgment on the question of laches in Courts of enquiry which has been quoted with approval in many subsequent decision of the

Supreme Court of India, is the case of The Lindsay Petroleum Company v.

Prosper Armstrong Hurd, Abram Farewell and John Kemp 1874

V.P.C. 221. The facts of that case have no relevance to the issue in question. But the Privy Council was considering the right of the plaintiffs in that

case who had lost their option to rescind the entire contract by the delay which had taken place in the assertion of their right. Sir Barnes Peacock

observed as follows:

Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy,

either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and

neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the

remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are not material. But in every case, if an argument against

relief, which otherwise would be just, is founded upon mere delay, that delay of course of limitations, the validity of that defence must of tried upon

principles substantially equitable.

This decision is important because the Privy Council touches on the impact of the doctrine of laches in Courts of Equity.

13. A Full Bench of this Court in D.A.O.K. Latchmanan Chettiar v. Commissioner, Corporation of Madras and Anr. AIR. 1927 Mad. 130 had to

equate the power of the High Court in the matter of issuing a writ of certiorari to the prerogative writs of the English Courts setting before them, the

duty of acting not under the statute but under the inherent powers which devolved upon the old Supreme Court of Madras and decided a question

of jurisdiction as well as the failure to object to the jurisdiction of a lower authority whose order was sought to be quashed. The Full Bench

observed as follows:

The point taken by Mr. Krishnaswami Aiyangar is that failure to object to the jurisdiction of the Court whose order is sought to be quashed only

debars the applicant when the objection is one involving the investigation of facts which were or should have been within the knowledge of the

applicant when he was before the lower court, and does not apply to a contention of law. We see no warrant in the cases for drawing any such

distinction, because in our opinion the test that they lay down is whether the

applicant armed with a point either of law or of fact, which would oust the jurisdiction of the lower Court, has elected to argue a case on its merits before that court. If so, he has submitted himself to a jurisdiction which he cannot be allowed afterwards to seek to repudiate. We are of opinion that the applicant has so conducted himself as to preclude this Court from exercising a discretionary jurisdiction in his favour.

14. In Mannarghat Union Motor Services Ltd., Mannarghat, South Malabar Vs. Regional Transport Authority, Malabar and Others, there was

again a question relating to the jurisdiction of the Regional Transport Authority. The Court after observing that they cannot say there was no force

in the contention that the Regional Transport Authority had no jurisdiction without deciding the issue, observed as follows:

If the petitioners thought that the Regional Transport Authority had no jurisdiction, they should have raised that plea without taking a chance of

getting a decision in their favour. Designedly or ignorantly they kept quiet or perhaps they did not want to displease the Regional Transport

Authority, or they expected that it would decide in their favour. It is too late to question the jurisdiction of a Tribunal to which they have submitted.

A Full Bench of this Court held in Latchmanan Chettiar v. Corporation of Madras 50 Mad. 130 (FB) that failure to object to jurisdiction before

the lower court is a bar to obtaining a writ of certiorari, whether the objection to jurisdiction is based on a pure point of law or based on facts

which or should have been within the knowledge of the applicants during the proceedings in the lower court. The said judgment is binding on me.

15. Pannalal Binjraj Vs. Union of India (UOI), was a case relating to the vires of Section 5(7A) of the Indian Income Tax Act, 1922 as amended

by Amendment Act XXVI of 1956 and consequently, the transfer of certain cases to certain Income Tax Officers was without jurisdiction. The

objection as to the want of jurisdiction of the transferee, Income Tax Officers was taken for the first time under Article 32 of the Constitution. The

Supreme Court observes,

There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases

being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income Tax Officers to whom their cases had been

transferred. It was only after our decision in *Bidi Supply Co. v. The Union of India* (Supra) was pronounced on March 20, 1956 that these

petitioners woke up and asserted their alleged rights, the Amritsar group on April 20, 1956, and the Raichur group on November 5, 1956. If they

acquiesced in the Jurisdiction of the Income Tax Officers, to whom their cases were transferred, they were certainly not entitled to invoke the

jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this

Court.

16. In *Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others*, the question was whether the

Regional Transport Authority had a power of review under the relevant provisions of the Motor Vehicles Act and whether his order reviewing his

own previous order was illegal and ultra vires. After holding that the order of the Regional Transport Authority was valid, by way of an additional

ground, the Supreme Court observed:

It is obvious that the private operators including respondent No.1 were parties to the order dated September 10, 1965, had accepted that

order, acted upon it and derived benefits and advantages from it for nearly one year and 9 months. But for the said order which suspended the

operation of the permit of the appellant till July 1, 1967 the private operators including respondent No.1 could not have got temporary permits to

operate on the same routes as no stage carriage permits could be issued u/s 62 of the Act during the subsistence of substantive permits. In these

circumstances, we consider that there was such acquiescence in the R.T.A.'s order dated 10.11.1965 on the part of respondent

No.1 and other private operators as to disentitle them to a grant of a writ under Article 226 of the Constitution. It is well established that the writ of

certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as, taken in

conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party.

In support of the above view the Supreme Court quoted with approval the observations of Sir Barnes Peacock in *The Lindsay Petroleum*

Company v. Prosper Armstrong Hurd Abram Farewell and John Kemp 1884 V.P.C.

221. Here again, the importance of this decision is that it touches on the aspect of the power of the High Court under Article 226 of the Constitution.

17. In *T. Kadiresan v. The State of Tamil Nadu Represented by its Commissioner and Secretary, Home (P & EJ) Department, Madras-9* 1986

T.L.N.J. 150 (Nainar Sundaram, J), considering a question whether a petitioner or under Article 226 of the Constitution could be shown any

indulgence in invoking a decision of the Court in *WP.No. 3437 of 1975* and batch of cases, wherein the rule regarding security deposit had been

invalidated and contending that the forfeiture of security deposits was unconstitutional, the learned Judge pointed out that the petitioners in that case

did not at any point of time earlier whisper any protest with regard to the levy and collection of the security deposit. Observing that if the point had

been raised earlier, different considerations would have weighed with the authorities and a different formula might have been adopted avoiding the

rule which had been held to be ultra vires, the Court commended that the conduct of the petitioner in that case was certainly not commendable but

on the other hand it was reprehensible. Following the observations of Sir Barnes Peacock in *The Lindsay Petroleum Company v. Prosper*

Armstrong Hurd, Abram Farewell and John Kemp 1874 Vol. V.P.C. 221 and the observations of the Supreme Court in *Maharashtra State Road*

Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, , the Court refused to exercise, the discretion under Article 226

of the Constitution of India in favour of the petitioners in that case. Similarly in *Moon Mills v. Industrial Court, Bombay* (1968) *I.S.C.J.* 364 : AIR

1967 S.C. 1450 the very same observations of Sir Barnes Peacock have been quoted with approval.

18. On the identical question which is being debated before us, Nainar Sundaram, J. has taken the view that the plea of want of jurisdiction should

not be permitted to be raised at a late stage. That was the case in *K.S. Gurumurthy v. The Additional Commissioner for Workmen's*

Compensation II, Madras-6 (1987) *I M.L.J.* 335. It is no doubt admitted that this judgment is the subject matter of writ appeal pending disposal in

this Court. In this case, exactly a similar objection based on Section 4(1)(c) of the Shop Act and the plea of want of jurisdiction by the Shop Act

Authority was raised for the first time before the learned single judge who was dealing with the writ petition seeking to quash the order of the Shop

Act Authority passed u/s 41(2) of the Shop Act. In that case, the Shop Act Authority had confirmed the order of dismissal made against the

workman by the bank. The learned Judge came to the conclusion on merits that the domestic tribunal had acted upon and dismissed the workman

without satisfactory evidence on the crucial aspect of temporary misappropriation. The learned Judge proceeded to say that the said findings were

sufficient to set aside the order of the Shop Act Authority. It was at that stage that an objection was taken in the counter-affidavit filed in the year

1986 in respect of the writ petition of the year 1980 that the bank was an establishment under the Central Government and therefore, Section

41(2) of the Shop Act will not give jurisdiction to the Shop Act Authority. This objection was, no doubt, taken on the basis of the judgment of the

Division Bench in C.V. Raman and Others Vs. Bank of India and Others, Naura Sundaram, J. proceeds to deal with the question whether the plea

of want of jurisdiction can be raised at this stage. The learned single Judge starts by saying that to thwart the grant of relief to the workman an

objection on the ground of want of jurisdiction was being taken at that late stage. It is unnecessary for us to refer to all the Judgments cited by

Nainar Sundaram, J. in the said case. It is sufficient for us to refer to the ultimate conclusion in the words of the learned Judge himself:

It will be a matter of abhorrence to the judicial conscience of this Court, if this point is permitted, to be raised by the second-respondent at this

juncture. Hence, the objection raised on behalf of the second-respondent with regard to lack of jurisdiction on the part of the first respondent

stands eschewed, and does not merit consideration at this juncture. In the said circumstances, and for the reasons expressed above, this writ

petition is allowed; the result of which is the order of dismissal passed by the second respondent against the petitioner will stand set aside.

Even the plea for a remittal of the case, to enable the bank to fill up the lacuna was rejected by the learned Judge. In our opinion, this judgment

provides a complete answer whether the plea of want of jurisdiction should be permitted to be argued in this appeal. Even though the judgment of

the learned Judge is the subject-matter of a writ appeal we cannot ignore the weighty reasons given and the other judgments relied on by the

learned Judge.

19. Paragraph No. 12 at Page 1975 of the case Shetkari Sahakari Sakhar Karkhana Ltd. Vs. The Collector of Sangli and Others, relates to the

power of the Supreme Court under Article 136 of the Constitution of India and does not have any relevance to the facts of this case.

20. We are clearly of the opinion that no principle of law or the ratio of any judgment can be applied in the abstract, without examining the facts of

the case. For instance, in A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd., , the question of long delay causing prejudice to the

opposite side or the conduct of the parties were neither involved nor considered.

21. We are aware of the line of decisions which lay down that no amount of consent, acquiescence, or waiver can confer jurisdiction on any

authority which has no inherent jurisdiction over the subject matter. This is the principle of law enunciated u/s 115 of the Indian Evidence Act. But,

the powers of the High Court under Article 226 of the Constitution of India are wider and the Court can pick and choose cases where and when

the plea of want of jurisdiction can be raised having regard to equitable considerations. While considering the grant of an equitable relief under

Article 226 of the Constitution of India and when faced with a plea of want of jurisdiction raised at a very late stage, one has to take note of the

laches on the part of the party in raising the ground of want of jurisdiction, his conduct in participating in the inquiry before the authority, preventing

the other side from taking any other course of action and also the prejudice that is caused to the other side on account of the plea of want of

jurisdiction being taken at the very last stage. This is precisely the reason for the long line of decisions cited by Mr. N.G.R. Prasad, a careful

analysis of all the decisions cited by Mr. Venkataraman will disclose that they are either not under Article 226 of the Constitution of India and in

case they are under Article 226, then, those decisions did not have occasion to consider the question of laches, conduct and prejudice as

aforsaid. In the light of the above discussion, we find that the view expressed in the line of decisions cited by Mr. N.G.R. Prasad have a better

appeal and a closer connection to the facts of this case. We are therefore inclined to apply those decisions and hold that the appellant, who was

the petitioner in the writ petition as well, cannot be allowed to argue and press

into service the additional grounds which were permitted to be raised in C.M.P.2939 of 1986.

22. Once we come to the conclusion that the plea of want of jurisdiction should not be allowed to be raised, at this stage when 17 years have elapsed, we will have to examine the judgment of the learned single Judge to find out whether it calls for any interference at our hands. As already stated, the only ground on which the appellant sought to set aside the order of the second respondent dated 4.11.1978 was that the findings of the second respondent were perverse. The learned Judge in the concluding portion of his judgment finds as follows:

As already stated, the petitioner mainly challenges the appreciation of the evidence adduced at the time of the enquiry by the petitioner-Bank and says that the appreciation of evidence by the second respondent is perverse. I do not see how when a witness gives two versions, one earlier to the enquiry and the other at the enquiry and the appellate authority accepts the version given at the enquiry stage the appellate authority could be said to have acted perversely. I cannot, therefore, hold in this case that the order of the second respondent is perverse merely because he has chosen to accept the evidence given by Sanjeevi at the domestic enquiry without rejecting it on the ground that it is contrary to the version given by him at the earlier stage.

23. No exception can be taken to the decision of the learned judge. In fact, we propose to examine the charges and the findings of the Disciplinary Authority in greater detail a little later which will support our conclusion reached above.

24. On the merits of the case, both the learned Counsel refer us to the charges, the evidence and the findings of the Enquiry Officer and the Disciplinary Authority to project their respective arguments. We extract below the charges framed against the first respondent.

1. It is alleged that you had received from Shri S.R. Sanjeevi on behalf of Mrs. D. Dhanalakshmi Ammal, wife of Shri S.R. Sanjeevi of Sanjeevi Cycle Mart, Attur Road, Rasipuram, every month of Rs.250 from November, 1968 onwards till January, 1973 towards the instalments due in her R.P. Account No. C-51 at the Rasipuram branch of our bank, undertaking to pay the same in the said R.P. Account and it is alleged, that you had

remitted into the said R.P. account only the seven instalments amounting to Rs. 1,750 and it is alleged that you had misappropriated the subsequent

32 instalments amounting to Rs.8,000 received by you towards the said R.P. Account.

2. It is further alleged that you had unauthorised made false entries in the said R.P. Pass Book in respect of instalments 8 to 13 while in fact only

first seven instalments have been received by the bank and entries made in the relative pass book, and while the bank had not received the

instalments from 8 to 13 towards the said account.

At the end of the charges, the Disciplinary Authority says that the above charges, if proved, will amount to major misconduct as per paragraph

19(5)(j) of the Bipartite settlement.

25. So far as the second charge is concerned, the same need not detain us because the Enquiry Officer himself found the first respondent, not guilty

of the said charge and the said findings were not disputed by the appellant Bank. From his very first explanation dated 7.6.1972, the first

respondent has been contending that the loan transaction between him and Sanjeevi was purely a private transaction and had nothing to do with the

first respondent's official duties as a bank employee. This stand has been pursued with; throughout the enquiry, the explanation to the second

show-cause notice and in the appeal filed before the Departmental Authority as well as the Shop Act authority. We are impressed by this stand

taken by the first respondent because even on a bare reading of the charges, we are unable to see how paragraph 19(5)(j) of The Bipartite

settlement is violated. For a better understanding of the case, para 19(5)(j) of the bipartite settlement is extracted below:

19.5. by the expression ""gross misconduct"" shall be meant any of the following acts and omissions on the part of an employee:

(a)....

(b)....

(c)....

(d)....

(e)....

(f)....

(g)....

(h)....

(i)....

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

(k)....

(I)....

26. It is not as if, the first respondent in his capacity as a bank shroff, on behalf of the bank, in the course of his employment and while discharging

his duties as a bank employee received any amount from Sanjeevi or Dhanalakshmi. It is not even the case of the appellant that the money was

paid by Sanjeevi to the first respondent in the bank premises. Nor is it the case of the appellant bank that the amount was deposited under any

bank challan or receipt. The sum and substance of the charge, assuming everything in favour of the appellant bank, is that Sanjeevi had a private

agreement with the first respondent to give money every month or by way of lumpsum which the first respondent had agreed to deposit in the R.P.

Account of Dhanalakshmi. If the first respondent did not arrange to deposit the amount in the bank, he has only committed a breach of trust in

relation to Sanjeevi or Dhanalakshmi. The liability or obligation of the bank is nowhere involved in this case. Therefore, the question of the good

name of the Bank being spoiled, does not also arise. In fact, in more than one place in the evidence, the agent of the bank is shown to have acted

solicitously and had volunteered to go to the aid of Sanjeevi when examined as the first witness for the bank, retracted the contents of the

complaint dated 17.5.1982 which is the basis for the whole drama. We are clearly of the opinion that the appellant-bank ought to have allowed the

matter to rest there, instead of pursuing with the retracted complaint by framing charges, wholly on a misplaced sympathy for Sanjeevi. It is

admitted that the appellant-bank did not suffer any loss. We are not able to resist the temptation to say that the appellant bank has attempted to

make a mountain of a molehill. Without, therefore, going into the evidence or appreciating the weight of the evidence, we hold that on a reading of

the first charge per se no case is made out against the first respondent. For the sake of completion, we will briefly refer to the decisions cited at the

bar on the question whether the first respondent is guilty of any conduct. These decisions lend support to the view taken by us.

27. In *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, the only charges which remained to be

considered was that the delinquent kept his cheque-book and used the same to withdraw money from the employer's account. The manner of

keeping his personal cheque book was not a part of his duty as a sales man. The Supreme Court observed that even if the allegation in the charge

is left unquestioned, it does not constitute misconduct. The Judgment of the single Judge in *W.B. Correya v. Deputy Managing Director, Indian*

Airlines (1977) 2 L.L.J. 163 as well as the judgment in appeal against the said judgment of the single Judge in *Indian Airlines and Others Vs. W.B.*

Correya, do not really support the question involved in this case. In the said Judgment, the Enquiry Officer had proceeded on the basis that the ex

parte statements given at the preliminary enquiry forms substantive evidence. The Enquiry Officer in that case did not even ask the witnesses

whether they had given such statements at the preliminary enquiry. The delinquent was straightaway asked to cross-examine the witnesses on the

basis that the statements given in the preliminary enquiry were substantive evidence. In this case, we are not concerned with such a situation. On

the other hand, in this case, the entire charge is based on the complaint dated 17.5.1972 and in the evidence, at the end of cross-examination and

at the end of re-examination the complainant has categorically stated that the averments in the complaint are not true. In *Central Bank of India Ltd.*

Vs. Prakash Chand Jain, the following passage seems to support the view taken by us *adidem*.

Applying this principle to the present case, it is clear that the previous statement made by Nand Kishore to Vazifdar could not be taken as

substantive evidence against the respondent, because Nand Kishore did not affirm the truth of that statement when he appeared as a witness and,

on the other hand, denied having made that statement altogether. Even though his denial may be false, fact would not convert his previous statement

into substantive evidence to prove the charge against the respondent. When the statement was given to Vazifdar in the absence of the respondent

and the truth is not affirmed by him at the time of his examination by the enquiry officer.

28. Mr. Venkataraman in reply cites the following passage in State of Haryana and Another Vs. Rattan Singh,

It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials

which are logically probative for a prudent mind are permissible. There is no allergy to hear evidence provided it has reasonable nexus and credibility.

This decision is far away from the facts of Our case. In the same volume, at page 54, the case of J.D Jain v. The Management of the State Bank,

does not also advance the stand taken by Mr. Venkataraman. An attempt was thereafter made to show that even outside the course of

employment, an employer is expected to behave properly. S.C. Tiwari and Ors. v. Central Railway (1960) I.L.L.J. 168 and Madhosingh

Daulatsingh Vs. State of Bombay, are relied on for this proposition. They relate to Government servants where the conduct Rules are slightly

different The judgment of the Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., is an answer to the arguments of

Mr. Venkataraman. The following passage at page 196 is opposite:

Now if what is alleged as misconduct does not constitute misconduct not by analysis or appraisal of evidence but per se under 1975 Rules the

respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. An administrative

authority who purports to act by its regulation must be held bound by the regulation. Even if those regulations have no force of law the employment

under these corporations is public employment, and therefore, an employee would get a status which would enable him to obtain a declaration for

continuance in service, if he was dismissed or discharged contrary to the regulations. (Sukhdev Singh, Oil and Natural Gas Commission, Life

Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal,

Industrial Finance Corporation, .

29. We therefore hold that the first respondent has not violated paragraph 19(5) (j) of the bipartite settlement and the first charge per se does not

makes out a case against the 1st respondent The second charge having been found in favour of the first respondent it follows that the order of the

disciplinary authority dated 22.11.1973 as confirmed by the General Manager on 19.3.1974 is totally without jurisdiction and has to be declared

as null and void.

30. In response to the rule nisi issued in W.P. No. 4670 of 1979, which is the subject-matter of the present writ appeal, all the records have been

brought before us. We have three orders, the validity of which are the subject matter of dispute between the parties:

1) The order dated 22.11.1973 discharging the first respondent from service passed by the Assistant Secretary of the Appellant bank (Disciplinary

Authority);

2) The order dated 19.3.1974 issued by the General Manager of the appellant bank confirming the order dated 22.11.1974;

3) The order dated 4.11.1978 of the second respondent setting aside the orders dated 22.11.1973 and 19.3.1974.

Before us, we have also the order of the learned single Judge dated 21.1.1983. If the orders of the learned single Judge and the Shop Act

Authority dated 4.11.1978 are null and void in view of the judgment of the Supreme Court in *Sri Ramayan Harijan Vs. State of West Bengal*, we

will be compelled to restore the order of the Disciplinary Authority dated 22.11.1973 as confirmed by the General Manager on 19.3.1974. Our

conscience does not permit us to restore the said two illegal orders of the appellant-bank. The Supreme Court of India has observed in more than

one case that all procedures are meant only to advance the cause of justice.

31. Before taking a final decision, we would like to quote a few sentences from *State of Kerala Vs. Kumari T.P. Roshana and Another*, . The

Supreme Court of India says.

After all, the Court system belongs to the people and must promote constructive justice: and all institutions, including the Governments and

Universities, likewise belong to the people. This commitment is the whet stone for doing justice in the wider context of social good.

Again, the following observations though rendered in a different context are also relevant:

Had we left the judgment of the High Court in the Conventional form of merely quashing the formula of admission the remedy would have

aggravated the malady confusion, agitation, paralysis. The root of the grievance

and the fruit of the writ are not individual but collective and while the "adversary system" makes the Judge a mere umpire, traditionally speaking, the community orientation of the Judicial function, so desirable in the Third World remedial jurisprudence transforms the Court's power into affirmative structuring of redress so as to make it personally meaningful and socially relevant Frustration of invalidity is part of the judicial duty; fulfillment of legality is complementary.

32. In fine, exercising our discretion under Article 226 of the Constitution, weighing the equities between the parties and taking note of the delay

and conduct of the appellant bank vis-a-vis, the prejudice and hardship that have been caused to the first respondent, we confirm, the order of the

learned single Judge and the order of the second respondent dated 4.11.1978 not because they have exercised power u/s 41 of the Shop Act but

because they have rightly set aside an illegal order of the Disciplinary Authority dated 22.11.1973 as confirmed by the General Manager of the

appellant bank on 19.3.1974. The writ appeal therefore fails and it is dismissed and having regard to the conduct of the appellant-bank to which

we have already made a reference, we award costs to the first respondent in a sum of Rs. 1,000 payable by the appellant bank.

33. The Honourable the Chief Justice: I have had the advantage of going through the elaborate judgment prepared by my learned brother,

Kanakaraj, J. He has dealt with all aspects of the case and I agree with the conclusions arrived at by him. I would, however, like to add a few

words of my own.

34. The facts of the case have been given by my learned brother and I need not recapitulate, the same except to the minimum extent necessary.

The disciplinary proceedings were set in motion against the first respondent on the basis of a complaint made by Sanjeevi, acting on behalf of his

wife, Dhanalakshmi, dated 17.5.1972. The gravamen of the allegation in the complaint was that the first respondent, to whom Dhanalakshmi used

to give a sum of Rs.250 per month from December, 1968 to January, 1972 for being deposited in her R.P. Account No.C-51 with the appellant

Bank, instead of depositing the entire amount, deposited only a part of the amount for about 7 months and for the balance 32 months, an amount

totaling about Rs.8,000 was not deposited. It was alleged that false entries had

been made in the pass book by the first respondent After receipt of the complaint, the first respondent was asked by the appellant Bank on 7.6.1972 to show cause why disciplinary action be not taken against him firstly, for not depositing the amount and secondly, for making false entries. The first respondent, in reply to the show-cause notice, stated that the allegations against him were false and that he had borrowed some money from Sanjeevi as loan and had agreed to repay the loan in instalments by depositing the instalments in the R.P. Account of his wife, Dhanalakshmi. Though he had, in fact, deposited some instalments, subsequently he could not continue to deposit and informed Sanjeevi of his inability. He agreed to repay the loan after some time and a promissory note was executed. He denied the allegation with regard to making false entries. Not being satisfied with the explanation of the first respondent, two charges came to be framed against him, which have been extracted by Kanakaraj, J. in paragraph 24 of the judgment. The disciplinary authority found that the second charge relating to unauthorisedly making false entries was not proved. It was, however, held that the first charge had been proved and, after serving a second show-cause notice on the first respondent, the disciplinary authority found that he had committed a misconduct within the meaning of paragraph 19(5)(j) of the Bipartite Settlement and discharged him from service. The order of discharge was questioned before the authority under the Tamil Nadu Shops Establishments Act, 1947 (hereinafter referred to as the Shop Act). The authority found, on an appraisal of the evidence, that the first charge also had not been proved and that the evidence on record did not lead to the conclusion that the first respondent was guilty of the charge and set aside the order of discharge, dated 22.11.1973, vide judgment dated 4.11.1978, after contest on merits by the appellant. The order of the Shop Act authority was questioned by the appellant through W.P.No.4670 of 1979 on merits. No plea about the alleged lack of jurisdiction of the competent authority to act u/s 41(2) of the Shop Act was raised. The writ petition was dismissed on 21.1.1983. The present appeal was filed on 26.4.1983. Even in the grounds of appeal, the plea regarding lack of jurisdiction of the competent authority u/s 41(2) was not raised.

35. In Union Bank of India and Others Vs. Additional Commissioner for

Workmen's Compensation and Others, decided on 15.6.1983, which judgment admittedly, was not available at the time when the writ appeal was filed, a learned single Judge of this Court held that nationalised banks were exempt from the provisions of the Shop Act, Subsequently, a Division Bench of this Court, in C.V. Raman and Others Vs. Bank of India and Others, decided on 18.4.1984, which also was not available at the time when the writ appeal was filed, took the same view. Apparently, encouraged by the aforesaid judgments of this Court, the appellant became wiser and sought to raise the additional ground regarding lack of jurisdiction of the authority under the Shop Act, but took two years to do so since the judgment in Union Bank of India case (supra) was delivered. The writ appeal, after being filed, was returned by the registry pointing out certain defects and was represented after 606 days of delay which, however, was ordered. The appellant filed C.M.P.NO. 4194 of 1986 on 12.3.1986 seeking to raise the additional ground in the appeal with regard to the lack of jurisdiction of the competent authority u/s 41(2) of the Shop Act. Notice was issued to the parties and the first respondent has resisted the application. It is C.M.P. No. 4194 of 1986 which first requires consideration at our hands.

36. The view expressed by this Court in Union Bank of India and Others Vs. Additional Commissioner for Workmen's Compensation and

Others, and C.V. Raman and Others Vs. Bank of India and Others, received the Seal of approval from the apex Court in Sri Ramayan Harijan

Vs. State of West Bengal, . Learned Counsel for the appellant has, therefore, urged that the law laid down by the Supreme Court, by virtue of

Article 141 of the Constitution of India being the law of the land, the additional ground sought to be raised needs permission since the question of

jurisdiction of lack of it goes to the root of the case. Detailed reasons, with which I agree, have been given by Kanakaraj, J. repelling the prayer of

the appellant.

37. Generally speaking, a plea with regard to lack of jurisdiction, it is well settled, can be permitted to be raised at any stage of the proceedings

and can be allowed to be raised for the first time in appeal, second appeal or even in SLP before the Supreme Court. The general principle,

however, cannot be applied in abstract and its application depends upon the

nature of the proceedings, conduct of the parties and the facts and circumstances of each case. I do not propose to lay down any principle of universal application as indeed it is not even possible, to show when such a plea cannot be allowed to be raised at a later stage. The question of permitting such a plea to be raised at any stage of the proceedings has necessarily to be looked at from the nature of the proceedings and the attendant circumstances of a case. It is, in the above peculiar facts and circumstances of this case, that I proceed to determine the question. The proceedings in the instant case arise out of a writ petition filed under Article 226 of the Constitution of India. Writ jurisdiction is undoubtedly, an equitable jurisdiction and while balancing the equities between the parties asserting rival claims, the court examines the conduct of the parties besides nature of the proceedings with a view to render justice. While exercising writ jurisdiction, the Courts generally make an attempt to reach wherever injustice is, so as to render justice. However, the principles of equity must, for ever, remain present to the mind of the Court and those principles are extended to do substantial justice to a party and not get carried away by narrow technicalities which may "legitimise" injustice. In *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , their Lordships of the Supreme Court observed thus:

It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

38. In the instant case, keeping in view the conduct of the appellant and its neglect to raise the plea of lack of jurisdiction at the earliest opportunity and the facts and circumstances of the case, the plea should not be allowed to be raised in the appeal now. (See with advantage *Pannalal Binraj Vs. Union of India (UOI)*, , My Judicial mind revolts to allow the appellant to raise the plea of lack of jurisdiction at this belated stage. To allow the plea of lack of jurisdiction to be raised at this stage, besides putting premium on negligence, would mean, holding the order of the competent authority setting aside the order of discharge of the first respondent from service to be illegal and a nonest order. The resultant effect would be that the order of discharge passed by the disciplinary authority would stand. It would be inequitable and even atrocious to now put the clock back by

17 years and tell the first respondent to start a fresh round of litigation. It would be perpetuating untold hardship on the employee, who has been

fighting for the last 17 years to protect his rights. The additional ground cannot, therefore, be now allowed to be raised so belatedly.

39. Even ignoring what has been said above, the whole question can be looked at from another angle also. This Court is competent enough, while

exercising jurisdiction under Article 226 of the Constitution of India, to ignore the order of the authority under the Shop Act on the alleged ground

of lack of jurisdiction and with a view to render justice itself proceed to examine the validity of the order of discharge of the first respondent from

service on the basis of the material already on the record, without in any way getting into the blurred area of critical appraisal of evidence or

adjudicate on disputed questions of fact. If the Court finds that the order of discharge from service is per se unsustainable, it can extend its arm to

set it at naught rather than to ask another forum to first adjudicate on its validity. We shall now examine the admitted facts and circumstances of the

case to satisfy ourselves about the validity of the order passed by the disciplinary authority and the material relied upon by it for passing that order.

The submission of the learned Counsel for the appellant that in no case has this Court scrutinised straightway the findings of the disciplinary

authority without the same having been scrutinised through appropriate proceedings before another forum, to give relief to an employee, in the

peculiar facts and circumstances of this case, does not affect our jurisdiction to examine the findings and render justice. A similar argument was

raised and answered by Lord Justice Denning, Master of the Rolls, in *Packer v. Packer* 1954 Law Reports, Probates Division, Page 15 thus:

What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to

me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the

world goes on: and that will be bad for both.

The above observations thus afford a complete answer to the submissions of learned Counsel for the appellant.

40. As already noticed, before the enquiry officer, the charges against the first respondent were sought to be established by examination of some

witnesses on behalf of the management and of reference to a few documents. The principal witness of the management in the case is Sanjeevi who had allegedly made the complaint, which had set the proceedings in motion. During the enquiry, he disowned the complaint and stated that he had written the application at the asking of the Agent of the Bank. The witness not only specifically disowned the complaint but went on to support the case, as put forward by the first respondent, in reply to the show-cause notice about the nature of the transaction between the first respondent and Dhanalakshmi to be of repayment of loan. The evidence of the Ace witness of the management, Sanjeevi, therefore completely belied the allegation contained in the first charge against the first respondent. The version given by Sanjeevi and his disowning the complaint had knocked the bottom of the management's case. Even though strict rules of evidence are not applicable in domestic enquiries the principles of the Evidence Act have their application. By applying those principles, it becomes clear that the complaint was not proved before the enquiry officer and he could proceed no further. No other witness produced by the management averred about the culpability of the first respondent either. The proceedings should not have been prosecuted any further. Even otherwise, so far as the complaint is concerned, at no place in the complaint has it been alleged that the first respondent had induced Dhanalakshmi in his capacity as an employee of the Bank to part with the money for depositing in her account with the Bank. It is not alleged in the complaint that the money was received by the first respondent in his capacity as a bank employee. It is not a case of the appellant Bank that the amount, was received by the first respondent, as part of his official duties, as an employee of the Bank from Dhanalakshmi. The statement of Sanjeevi, coupled with the promissory note and the receipt produced by the complaint before the enquiry officer show that the transaction between Dhanalakshmi and the first respondent was not a transaction between an employee of the Bank and a customer of the Bank. All these factors lead to an unmistakable conclusion that the transaction between Dhanalakshmi and the first respondent, even if the allegations in the complaint are accepted to be true, was only of a private nature, unconnected with the conduct or duty of the first respondent as an employee of the appellant Bank. The transaction was an outcome of unpaid loan. If, after receiving the money privately from Dhanalakshmi, the

first respondent had misappropriated the amount, it was open to Dhanalakshmi to take proceedings, including criminal proceedings for breach of trust against the first respondent, but by no stretch of imagination can it be said that the first respondent had in any way misappropriated the amount of the Bank or caused any loss to the Bank. It might even be a case of breach of contract, entitling Dhanalakshmi to take recourse to civil proceedings, The Agent of the Bank appears to have acted pro-bono-publice and interfered in an area which was a ""private area"" and not the forbidden area"". As a matter of fact, it was admitted by the appellant Bank itself before the enquiry officer that by the action of the first respondent, no loss at any point of time was caused to the Bank. The failure of the second charge before the enquiry officer with regard to the alleged falsification of the entries also goes to show that the action of the first respondent in not depositing the amount in accordance with the agreement arrived at between him and Dhanalakshmi could not be construed by logic or reason as any misconduct within the meaning of paragraph 19.5(j) of the Bipartite Settlement On the basis of the admitted material on the record and without any critical reappraisal of the evidence let in before the enquiry officer and confining our scrutiny to the bare facts apparent on the fact of the record, the conclusion is irresistible that the first charge against the first respondent was not proved. That apart, even if the allegations in the first charge are held to have been established, the result would not be different because the allegations in the first charge, vague and indefinite as they are, do not establish a case of misconduct as contemplated by paragraph 19.5(j) of the Bipartite Settlement Not only in the complaint, but even in the charge, there is no allegation that the first respondent had received the amount in his capacity as a bank employee or that he had been entrusted with the amount by Dhanalakshmi in the discharge of his official duties. It was no part of the duties of the first respondent to collect deposits on behalf of the bank and Sanjeevi neither in his statement nor in the complaint has ever said that but for the fact that the first respondent was an employee of the bank, he would not have been entrusted with the amount for the purpose of its alleged deposit in the bank. The transaction, as per the averments contained in the charge, it purely a private one between Dhanalakshmi and the first respondent and even remotely cannot attract the penalty of discharge on the basis of the alleged

misconduct as per paragraph 19.5(j) of the Bipartite Settlement.

41. Thus, from whichever angle one looks at the facts and circumstances of the case, it becomes obvious that the first respondent was wrongfully

discharged from service and the order of discharge passed by the disciplinary authority cannot be sustained. In that view of the matter, the

judgment of the learned single judge deserves to be upheld, though for somewhat different reasons; The Writ appeal consequently fails and is

dismissed with costs as assessed by my learned brother, Kanakaraj, J.