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**(2015) 01 RAJ CK 0051**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 3260/1995**

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|---------------------------------------|------------|
| Sanatan Dharam Girls Secondary School | APPELLANT  |
| Vs                                    |            |
| Labour Court                          | RESPONDENT |

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

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10(1)(G), 11A

**Citation :** (2015) 147 FLR 155 : (2015) 2 LLN 531

**Hon'ble Judges :** Sandeep Mehta, J.

**Bench :** Single Bench

**Advocate :** Abhinav Jain for S.L. Jain, for the Appellant

**Final Decision :** Allowed

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## Judgement

Sandeep Mehta, J.—The instant writ petition is directed against the judgment cum award dated 21.9.1994 passed by the Labour Court, Bikaner in Case No. 40/1990 whereby the reference made by the State Government under Section 10(1)(G) of the Industrial Disputes Act, 1947 was disposed of directing that the dismissal of the respondent workman Mahendra Yadav from service of petitioner school shall be effective from 21.9.1994.

2. Succinctly stated the facts are that the respondent No. 2 workman was engaged as watchman in the petitioner school in the year 1977. It appears that there were complaints regarding the performance of the duties and conduct of the employee on which he was dismissed from service w.e.f. 20.3.1986 after holding a domestic enquiry wherein it was found that the workman was guilty of misconduct.

3. The respondent workman raised an industrial dispute. The State Government referred the dispute to the Labour Court, Bikaner under Section 10(1)(G) of the I.D. Act. The Labour Court by its order dated 28.1.1992 found that the procedure of conducting the domestic enquiry against the workman suffered from the defect of violation of principles of natural justice and set aside the dismissal

order. Thereafter at the petitioner's request, the Labour Court itself proceeded to hold an enquiry under Section 11F of the I.D. Act.

4. After holding enquiry, the Tribunal also arrived at a conclusion that the respondent workman was guilty of grave and gross misconduct could not be allowed to be continued in service. Accordingly the learned Labour Court passed an award dated 21.9.1994 dismissing the workman from the services of employer school w.e.f. 21.9.1994 instead of 20.3.1986.

5. Being aggrieved by the impugned award passed by learned Labour Court, Bikaner, the petitioner school has approached this Court by way of the instant writ petition with a prayer that as the Tribunal reached to the same conclusion which had been arrived at by the petitioner school after holding a domestic enquiry against the workman and as the workman was held responsible by the Tribunal of grave and gross misconduct, the appropriate order would have been relate back the dismissal of the respondent workman from the original date of dismissal i.e. 22.3.1986.

6. Mr. Abhinav Jain, learned counsel for the petitioner institution contended that the respondent workman was held liable of committing gross misconduct which included the incidents of misbehaving with the female teachers of the school. Thus, the learned Labour Court should have directed that the dismissal would relate back to the date when the order of dismissal was passed by the petitioner Institution. In support of this contention, the learned counsel relied upon the decision of the Hon"ble Supreme Court in the case of R. Thiruvirkolam Vs. Presiding Officer and another, and urged that the Hon"ble Apex Court in the aforesaid judgment examined the correctness of the view taken in the contrary decision of the Apex Court in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, and held that the earlier decision of the Apex Court in P.H. Kalyani Vs. Air France Calcutta, would prevail because it was a judgment rendered by the Constitution Bench. As per the learned counsel, the Hon"ble Apex Court has unequivocally laid down in R. Thiruvirkolam's case (supra) that if the dismissal of the employee after domestic enquiry is held to be void for want of enquiry or for blatant violation of principles of natural justice and when the Tribunal after holding the enquiry arrives at the same conclusion as the employer, the dismissal has to relate back to the date of original dismissal. Learned counsel thus submitted that the learned Tribunal's order whereby the dismissal of the workman was made effective from the date of the order i.e. 21.9.1994 instead of the date of the original dismissal i.e. 20.3.1986 is bad in the eye of law to that extent and the same deserves to be modified accordingly.

7. Nobody has put in appearance on behalf of the respondent No. 2 workman despite service.

8. I have thoughtfully considered the arguments advanced by the learned counsel for the petitioner and have gone through the impugned award and the case law cited at the bar.

9. The petitioner institution dismissed the respondent workman from service on the ground of misconduct after holding a domestic enquiry against him. However, the enquiry held by the petitioner institution against the workman was held to be vitiated and illegal on account of breach of principles of natural justice by the Tribunal vide its order dated 28.1.1992.

10. At the request of the petitioner institution, the Tribunal itself conducted an enquiry against the workman under Section 11A of the Act and reached to the independent conclusion that the respondent workman was guilty of gross misconduct. His behaviour was found to be abusive and offensive. Numerous complaints were made by the girls students and female teachers regarding the conduct of the respondent workman. It was also found that the employee himself admitted his guilt in the letters M-26, 27 and 28. The Tribunal also concluded that the respondent workman did not improve his conduct despite numerous warnings. The Tribunal also concluded that the respondent workman was liable to be dismissed from service for committing gross misconduct. However, the Tribunal made the dismissal effective from the date of its order i.e. 21.9.1994, instead of relating back the dismissal from the original date i.e. 20.3.1986. By implication of the tribunal's order, the respondent employee became entitled to claim wages for the period between his original dismissal by the employer and the order of dismissal passed by the Tribunal.

11. The theory of relating back of the dismissal order was propounded by the Hon'ble Apex Court in the case of P.H. Kalyani Vs. M/s. Air France Calcutta (supra). However, it appears that the two Judges bench of the Hon'ble Supreme Court in the case of Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha (supra) took a contrary view after considering P.H. Kalyani's case.

12. The controversy raised before the Hon'ble Supreme Court in the case of R. Thiruvirkolam Vs. The Presiding Officer (supra) was as to whether interpretation of the ratio in P.H. Kalyani's case made by the Hon'ble Supreme Court in Gujarat Steel Tubes Ltd. (supra) is in consonance with the ratio laid down in P.H. Kalyani's case or not. After considering the issue in detail, it was held that the interpretation of P.H. Kalyani's case ratio as done in Gujarat Steel Tubes Ltd. (supra) was not correct. It was held by the Hon'ble Apex Court as below in R. Thiruvirkolam's case (supra):-

"The appellant was employed as a technician with M/s. Madras Fertilizers Ltd. - Respondent No. 2. He was dismissed from service after a domestic inquiry on November 18, 1981 on proof of misconduct. The appellant challenged his dismissal before the Labour Court. The Labour Court found the domestic inquiry to be defective and permitted the management to prove the misconduct before it. On the basis of the evidence adduced before the Labour Court, it came to the conclusion that the punishment imposed was justified as the misconduct was duly proved. The Labour Court's order is dated December 11, 1985. Appellant then filed a writ petition before the High Court which was dismissed by a single Bench. The writ appeal filed by the appellant was also dismissed by a Division

Bench of the High Court. Hence this appeal by special leave.

2. The leave granted in this appeal is confined only to the question: whether the dismissal will take effect from the date of the order of the Labour Court, namely, December 11, 1985 or it would relate to the date of the order of dismissal passed by the employer, namely, November 18, 1981.

3. The only point involved for decision is apparently concluded by the decision of the Constitution Bench in *P.H. Kalyani Vs. Air France Calcutta*, However, this point appears to have been raised on behalf of the appellant on the basis of certain observations made in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, which appear to be contrary.

4. Reference may be made first to the decision in *P.H. Kalyani Vs. Air France Calcutta*, . This point arose directly before the Constitution Bench and such a contention was rejected, making a distinction between a case where no domestic inquiry had been held and another in which the Inquiry is defective for any reason and the Labour Court on its own appraisal of evidence adduced before it reaches the conclusion that the dismissal was justified. It was held that in a case where the inquiry was found to be defective by the Labour Court and it then came to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified, the order of dismissal made by the employer in a defective inquiry would still relate to the date when that order was made. In that decision it was stated thus:

".....If the inquiry is defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer in a defective inquiry would still relate back to the date when the order was made....In the present case an inquiry has been held which is said to be defective in one respect and dismissal has been ordered. The respondent had however to justify the order of dismissal before the Labour Court in view of the defect in the inquiry. It has succeeded in doing so and therefore the approval of the Labour Court will relate back to the date on which the respondent passed the order of dismissal. The contention of the appellant therefore that dismissal in this case should take effect from the date from which the Labour Court's award came into operation must fail." (Pages 113 and 114) In our opinion, the authoritative pronouncement by the Constitution Bench in *Kalyani* puts the matter beyond doubt.

5. We may now refer to the decision by a three-Judge Bench in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, . Krishna Iyer, J. speaking for the three-Judge Bench observed at page 215 (of SCR) : (at 1933 of AIR) as under:

*P.H. Kalyani Vs. Air France Calcutta*, was cited to support the view of relation back of the Award to the date of the employer's termination orders. We do not

agree that the ratio of Kalyani corroborates the proposition propounded Jurisprudentially, approval is not creative but confirmatory and therefore relates back. A void dismissal is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus there life into the dead shell of the Management's order, predating of the nativity does not arise. The reference to Sasa Musa in Kalyani enlightens this position. The latter case of D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, specifically refers to Kalyani's case and Sasa Musa's case and holds that where the Management discharges a workmen by an order which is void for want of an enquiry or for blatant violation of rules of natural justice, the relation back doctrine cannot be invoked. The jurisprudential difference between a void order, which by a subsequent judicial resuscitation comes into being de novo, and an order, which may suffer from some defects but is not still born or void and all that is needed in the law to make it good is a subsequent approval by a tribunal which is granted, cannot be obfuscated.

We agree that the law stated in D.C. Roy (supra) is correct but now that the termination orders are being set aside, the problem does not present itself directly..."

(Emphasis supplied)

Apparently these observations appear to strike a discordant note, even though Kalyani is referred therein.

6. The basis of the observation is that "A void dismissal is just dismissal and does not exist". In other words, the reason for making these observations is that a void order does not come into existence until by a subsequent judicial resuscitation it comes into being inasmuch as a void order is still born. Is this assumption jurisprudentially correct?

7. It is significant that the Constitution Bench decision in P.H. Kalyani Vs. Air France Calcutta, , by which the three-Judge Bench was bound, is referred in Gujarat Steel and attempt made to indicate that there is no difference in the view taken therein. It is also significant that agreement is expressed with the decision in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, to which Krishna Iyer, J. was a party and in which Kalyani has been expressly followed. It has now to be seen whether the above observations in Gujarat Steel, (AIR 1980 SC 6) are in consonance with Kalyani and D.C. Roy and also conform to the juristic basis indicated therein.

8. The above extract from Kalyani which contains the ratio of the decision clearly indicates that the above observations in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, are not in conformity with Kalyani. In P.H. Kalyani Vs. Air France Calcutta, it was held that the defect found in the domestic inquiry is nullified by proof of misconduct on the basis of evidence adduced before the Labour Court so that there is no ground available for the Labour Court to set aside the order of punishment. The question before

the Labour Court is whether the order of punishment should be set aside on any ground and when the Labour Court ultimately reaches the conclusion that even though the inquiry was defective, there is material to justify in the punishment awarded, it rejects the challenge to the order of punishment which continues to operate. It is not as if the order of punishment becomes effective only on rejection of the challenge to its validity. Unless set aside by a competent Court on a valid ground, the order of punishment made by the employer continues to operate. The operation of the order punishment made by the employer does not depend on its confirmation by the Labour Court to make it operative. Unless set aside by a competent authority, the order of punishment made by the employer continues to be effective. Obviously this is the ratio of the decision in P.H. Kalyani Vs. Air France Calcutta, .

9. The decision in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, is by a two-Judge Bench to which Krishna Iyer, J. is a party. Therein also it was held that the award of the Labour Court relates back to the date when the order of dismissal was passed by the employer when it found the inquiry to be defective but reaches the conclusion on the evidence adduced before it that the dismissal was justified. After referring to P.H. Kalyani Vs. Air France Calcutta, it was held in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, as under:

"These observations directly cover the case before us because the Labour Court, in the instant case, found that the inquiry was defective as it infringed the principles of natural justice, it came to the conclusion after considering the evidence adduced before it, that the dismissal was justified. The award of the Labour Court must therefore relate back to the date when the order of dismissal was passed on the termination of the Domestic inquiry". (Page 805) (of SCR) (at p. 1763 of AIR)

10. We may now refer to the juristic principle on which the above quoted observation in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, appears to be based. There is a very useful discussion of the topic under the heading "Void and Voidable" at pages 339 to 344 in Administrative Law by Wade, Seventh Edition. The gist of the discussion in Wade is as under:

"...Here also there is a logical difficulty, since unless an order of the Court is obtained, there is no means of establishing the nullity of the list. It enjoys a presumption of validity, and will have to be obeyed unless a Court invalidates it. In this sense every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well known passage Lord Radcliffe said: An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible

purpose as the most impeccable of orders". (Pages 341 and 342) ""Void" is therefore meaningless in any absolute sense. Its meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over "void or voidable" can be avoided." (Pages 341 and 344)

(Emphasis supplied)

11. With great respect, we must say that the above quoted observations in *Gujrat Steel*, at page 251 (of SCR) : (at p. 1933 of AIR) are not in line with the decision in *P.H. Kalyani Vs. Air France Calcutta*, which was binding or with *D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others*, to which the learned Judge, Krishna Iyer, J. was a party. It also does not match with the underlying juristic principle discussed in *Wade*. For these reasons, we are bound to follow the Constitution Bench decision in *Kalyani* which is the binding authority on the point.

12. We may now refer to later decisions of this Court in *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another*, , and *Rambahu Vyankuji Kheragade Vs. Maharashtra Road Transport Corporation*, . In *Rambahu, Kalyani and D.C. Roy* was followed by a two Judge Bench and similar view was taken that the order of dismissal takes effect from the date on which it was originally passed and not from the date of the Labour Court's award when the Labour Court, after holding the domestic inquiry to be defective reaches the conclusion on the evidence adduced before it that the punishment awarded was justified. However in *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another*, the observations in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, were relied on for taking a different view without any reference to either *Kalyani* or *D.C. Roy* which appear to have been overlooked. In these circumstances the decision in *Desh Raj Gupta* cannot be treated as an authority on the point. Both these decisions were by two Judge Bench.

13. As a result of the aforesaid decision it must be held that the only point involved for decision in the appeal is concluded against the appellant by the Constitution Bench decision of this Court in *P.H. Kalyani Vs. Air France Calcutta*, and the observations to the contrary in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, are, therefore, per incuriam and not binding. The order of punishment in the present case operated from November 18, 1981 when it was made by the employer and not from December 11, 1985, the date of Labour Court's award. The appellant is, therefore, not entitled to any relief.

14. The appeal is, accordingly, dismissed. No costs."

(emphasis supplied)

13. Thus, the controversy involved in this case stands squarely covered by the

judgment rendered by the Hon''ble Apex Court in the case of R. Thiruvirkolam's case. The Tribunal conclusively held after holding an enquiry under Section 11A of the I.D. Act that the respondent No. 2 workman was guilty of gross misconduct. In such a case, the dismissal of the respondent workman had to relate back to the date when he was originally dismissed from service by the employer after holding domestic enquiry.

14. As a consequence of the aforesaid discussion, the writ petition deserves to be and is hereby allowed. The order passed by the learned Labour Court, Jodhpur dated 21.9.1994 is modified and now it is hereby directed that the dismissal of the services of the respondent workman shall be effective from 20.3.1986 i.e. the date of his dismissal from service by the petitioner institution after holding the domestic enquiry instead of 21.9.1994 as directed by the Tribunal in its award. No order as to costs.