
(2004) 03 AHC CK 0228
In the Allahabad High Court
Case No : C.M.W.P. No. 16755 of 1985

Simal Chand Jain (Dead) by LRs.

APPELLANT

Vs

Central Government Industrial Tribunal and Another

RESPONDENT

Date of Decision : 01-03-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 7A
Penal Code, 1860 (IPC) — Section 409

Citation : (2004) 5 AWC 4094 : (2004) 102 FLR 258 : (2005) 1 LLJ 28

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : K.P. Agrawal, Indra Yadav and Kirti Singh, for the Appellant; Sharad Varma, S.S.C., Avinash Tripathi, S.N. Varma and Navin Sinha, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri K.P. Agrawal, learned senior advocate appearing for the petitioner and Sri Avinash Tripathi for the respondents. By this writ petition, the petitioner has prayed for a writ of certiorari for quashing the award dated July 9, 1985 given by the Industrial Tribunal, Kanpur in Adjudication Case No. 169 of 1981.

2. The brief facts necessary for deciding the controversy raised in the writ petition are:

The petitioner was working as Cashier in Central Bank of India. A shortage of Rs. 50,000/- on June 25, 1970 in cash was detected while he was officiating as Head Cashier at Central Bank of India, Meerut city. A First Information Report was lodged u/s 409, IPC against the petitioner on which criminal trial was initiated. The petitioner was convicted on September 22, 1977 and sentenced to undergo for two years rigorous imprisonment. In Criminal Appeal No. 215 of 1977 the appellant's conviction and sentence was set aside by the order dated February 18, 1978. A Civil Suit No. 270 of 1973 was also instituted by the Bank against the petitioner for recovery of Rs. 50,000/- from the petitioner who was defendant

in the suit. The suit was dismissed by the II Additional Civil Judge on August 20, 1976. However, while deciding the issue No. 4 the Civil Court observed recording the finding that the defendant was negligent in dealing with the cash and the defendant was liable to make good the shortage of Rs. 50.000/-. The petitioner was placed under suspension on July 30, 1970 with effect from July 26, 1970. The petitioner was attaining the age of superannuation on September 7, 1977. The order dated September 6, 1977 was passed by the Assistant General Manager dismissing the petitioner from service with effect from September 7, 1977. The petitioner raised industrial dispute which was referred by the Central Government by referring order dated September 1, 1981. The reference reads as follows:

"Government of India/Bharat Sarkar Ministry of Labour/Shram Mantralaya

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Dated New Delhi, October, 1981

ORDER

No. L 12012/103/80-D, II (A), Whereas the Central Government is of opinion that an industrial dispute exists between the employer in relation to the management of Central Bank of India and their workman in respect of the matter specified in the Schedule hereto annexed,

And whereas the Central Government considers it desirable to refer the said dispute for adjudication,

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, New Delhi constituted u/s 7A of the said Act.

THE SCHEDULE

"Whether the action of the management of the Bank of India, Lucknow in dismissing Sri Simal Chand Jain and Ex-Assistant Cashier at the Meerut City Branch of the Bank with effect from September 7, 1977 in contravention of the provisions of the Bipartite settlement is legal and justified ? If not, to what relief is the said workman entitled?

(T.B. Sitaraman) Desk Officer."

3. The Tribunal by its award dated July 9, 1985 held that the dismissal of the petitioner is not in contravention of provisions of Bipartite settlements. Tribunal observed that paragraph 19.3 or 19.6 do not lay down that the management will give a show cause notice against the proposed punishment. The Tribunal held that the disciplinary authority was within its right to rely on the finding of gross negligence as given by the Civil Court. The Tribunal relying on paragraph 19.6 of the Bipartite settlements held that the disciplinary authority was within its power

to dismiss the workman without notice. The learned counsel for the petitioner challenging the award of Tribunal contended that the dismissal of the petitioner was in contravention of Bipartite settlements and the award of the Industrial Tribunal is erroneous. The learned counsel for the petitioner has referred to and relied on paragraph 19.3 of the Bipartite settlements.

4. The counsel for the petitioner further contended that the petitioner having not been convicted, the dismissal under Paragraph 19.3 sub-clause (b) was not permissible. He further contended that in case of acquittal as contemplated in paragraph 19.3 (c), the management was free to hold an enquiry and take a decision not to continue the petitioner in service but no enquiry having been held the dismissal of the petitioner straightway was unjustified and contrary to Bipartite settlements. Sri Avinash Tripathi, learned counsel appearing for the respondents relying on paragraph 19.6 of Bipartite settlements contended that since the petitioner was found guilty of gross misconduct by the Civil Court vide its judgment dated August 20, 1976, the management was fully entitled to dismiss the petitioner without notice as provided in paragraph 19.6 read with paragraph 19.50), he also referred to paragraph 19.5 (j).

5. I have considered the submissions of both the counsels and perused the record. Both the parties have placed reliance on Paragraphs 19.3, 19.5 and 19.6 of Bipartite settlements. Before proceeding further to consider the respective submissions it is relevant to quote Paragraphs 19.3 and 19.6 of Bipartite settlements which are as follows:

"19.3(a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted the Bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below.

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances, as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct.

(d) If he prefers an appeal or revision application against his conviction and is

acquitted, in case he had already been dealt with as above and he appeals to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set below in Clauses 19.11. and 19.12 infra relating to discharge, and the provisions set out above as to pay, allowances and the period of suspension will apply, the period upto date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three months' pay and allowances in lieu of notice as directed above."

"19.6 An employee found guilty of gross misconduct may:

- (a) be dismissed without notice; or
- (b) be warned or censured, or have an adverse remark entered against him; or
- (c) be fined; or
- (d) have his increment stopped; or
- (e) have his misconduct condoned and be merely discharged."

6. There is no dispute between the parties that on First Information Report being lodged by the Bank against the petitioner criminal trial started u/s 409, IPC. The petitioner was placed under suspension by the Bank. It is also admitted that no disciplinary enquiry was initiated against the petitioner by the Bank nor any charge-sheet was issued against the petitioner. The petitioner was straightway dismissed by the order dated September 6, 1977. The dismissal itself notes that the management has not been able to proceed to hold departmental enquiry against the petitioner. The dismissal order further states that in view of the judgment of the II Additional Civil Judge dated August 20, 1976 and in view of overwhelming evidence the Bank had come to the conclusion that the petitioner is grossly negligent in discharging of his duties. The question which has arisen in the present case is as to whether the Bank could have validly passed the dismissal order in accordance with the Bipartite settlements. The thrust of the submission of the counsel for the respondents that since the petitioner was found negligent in performance of his duties which is gross misconduct within the meaning of Paragraph 19.5(j), exercising the power under Paragraph 19.6 the Bank had every jurisdiction to dismiss the petitioner without any notice. The main issue thus which arises from the pleadings of the parties is as to whether the Bank without holding a disciplinary enquiry and without itself recording a finding of gross misconduct in a disciplinary enquiry, could have relied on the findings of the Civil Court in suit which was dismissed and dismissed the petitioner from service. Paragraph 19.5 of First Bipartite settlement defines expression "gross misconduct". Various misconducts enumerated in Paragraph 19.5 includes sub-paragraph (j) which is doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the

Bank in serious loss. Pre-condition for arriving at the finding of misconduct is that the said finding has to be arrived at by the Bank, the word "found guilty" as used in Paragraph 19.6 cannot read as "found guilty" in any other proceedings including a civil suit. As noted above the civil suit filed by the Bank for recovery of Rs. 50,000/- was dismissed. However, the findings were recorded that the petitioner was negligent and he is liable to make good the shortage of Rs. 50,000/-. In the finding recorded by the Civil Court it was observed that the defendant is liable to make good the shortage of Rs. 50,000/-. In the civil suit the question as to whether the said act is gross misconduct within the meaning of Paragraph 19.5 was not even involved nor the Civil Court can be said to have given any opinion as to whether the conduct of the petitioner was gross misconduct within the meaning of Paragraph 19(5)(j) of the Bipartite settlements. The said finding could have been arrived at only by the Bank in the enquiry initiated by the Bank. The submission of Sri Tripathi that since the petitioner was found guilty by the Civil Court in one of the findings, he can be dismissed without notice cannot be accepted. The finding of guilt itself cannot be findings in some enquiry regarding guilt of the person concerned. In the present case no enquiry having been held by the Management, there is no occasion for finding the petitioner guilty. The Tribunal committed an error in holding that the Bank was entitled to exercise power under Paragraph 19.6 in passing the dismissal order without holding the enquiry. As observed above, the Bank could not have relied on the finding and observations of the Civil Court regarding negligence and erred in dismissing the petitioner without holding enquiry against him.

7. The view as taken above, fully finds support from the scheme of its action and procedure as contained in Chapter-XIX of first Bipartite settlement. Paragraph 19; 10 of the Bipartite settlement provides that in all cases in which action under Clauses 19.4, 19.6 or 19.8 may be taken, the proceedings held shall be entered in a book kept specially for the purpose. Paragraph 19.10 thus clearly provides that the finding of guilt of gross misconduct as mentioned in Paragraph 19.6 has to be arrived at after drawing disciplinary proceedings. A conjoint reading of Paragraphs 19.6 and 19.10 negates the argument of the counsel for the respondents that the finding of the Civil Court of gross misconduct of the petitioner could have been relied while passing dismissal order under Paragraph 19.6. Paragraph 19.10 gives a detailed procedure for the enquiry which is nothing but disciplinary enquiry for finding guilt of an employee as contemplated in paragraph 19.6. Paragraph 19.10 provides as follows:

"19.10 In all cases in which action under Clauses 19.4, 19.6 or 19.8 may be taken, the proceedings held shall be entered in a book kept specially for the purpose, in which the date on which the proceedings are held, the name of the employee proceeded against the charge or charges, the evidence on which they are based, the explanation and the evidence, if any, tendered by the said employee, the finding or findings, with the grounds on which they are based and the order passed shall be recorded with sufficient fullness, as clearly as possible

and such record of the proceedings shall be signed by the officer who holds them, after which a copy of such record shall be furnished to the employee concerned if so requested by him in writing."

8. The Tribunal in Paragraph 7 has also erred in observing that in Paragraphs 19.3 and 19.6 of the Bipartite settlement there is no requirement of giving show cause notice. For arriving on the finding of the gross misconduct as contemplated in Paragraph 19.5 notice and opportunity is must otherwise the Paragraph 19.5 itself may be held to be violative of constitutional protection. The Tribunal committed error in giving the award against the petitioner whereas the dismissal was clearly contrary to the Bipartite settlements and the petitioner was entitled for the relief of declaring I the dismissal as inoperative.

9. In view of above the writ petition is allowed. The order dated July 9, 1983 of the Tribunal is set aside and it is held that the dismissal of the petitioner was inoperative being contrary to the provisions of the Bipartite settlements. The petitioner was entitled for all the benefits to which he was entitled in accordance with law. The petitioner has died during the pendency of the writ petition on November 9, 1994. The substitution application of the petitioner has already been allowed by this Court on September 18, 2003. The legal heirs of the petitioner are entitled to the pecuniary benefits to which the petitioner was entitled, consequent to declaring his dismissal order inoperative. Order accordingly. Both the parties shall bear their own cost.