
(2005) 10 SC CK 0072
In the Supreme Court Of India
Case No : Civil Appeal No. 665 of 2002

State Bank of India

APPELLANT

Vs

K.C. Tharakan and Others

RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 5
Industrial Disputes Act, 1947 — Section 7

Citation : (2006) 101 CLT 235 : (2005) 107 FLR 848 : (2005) 12 JT 358 :
(2006) 1 LLJ 332 : (2006) 1 PLJR 411 : (2005) 8 SCALE 211 : (2005) 8 SCC
428 : (2005) SCC(L&S) 1159 : (2005) 1 SCR 1012 Supp : (2006) 1 SLJ 343 :
(2006) 1 UPLBEC 144

Hon'ble Judges : Tarun Chatterjee, J;S. N. Variava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.N. Variava, J.—This Appeal is against the Judgment of the Gauhati High Court (Shilong Bench) dated 22nd November, 2001.

2. Briefly stated the facts are as follows:

The Respondent joined the Appellant Bank as a Clerk-cum-Typist sometime in 1963. In 1968 the Respondent appeared in the CAIIB Examination conducted by the Indian Institute of Bankers (for short IIB). The examination was being held in the premises of the Shilong Branch of the Appellant Bank. One of the senior Officers of the Appellant Bank, by name Shri T. P. Barua, was the Invigilator during the examination.

3. According to the Appellant Bank, the said Shri T. P. Barua found that the Respondent was copying from books. This is denied by the Respondent who claims that he had noticed that the said Shri T. P. Barua was favouring other candidates and helping them cheat. We are not concerned with this dispute except to note that the Respondent wrote three letters dated 1st November, 1968, 2nd November, 1968 and 7th November, 1968 to the IIB making

allegations against the said Shri T. P. Barua. The said Shri T. P. Barua also made a report to IIB. IIB acted on the report by Shri T. P. Barua and cancelled the result of the examination of the Respondent. IIB also debarred the Respondent from appearing in the examination for three years. This action of the IIB was taken on 5th March, 1969.

4. The Appellant Bank on 8th April, 1969 issued a charge-sheet against the Respondent on the ground that he had mis-conducted himself by making serious allegations against a senior officer. The Appellants charged the Respondent with indulging in a conduct which was prejudicial to the interest of the Bank. The Respondent was called upon to appear in the disciplinary inquiry which was initiated against him. The Respondent, however, claimed that no such inquiry could be conducted as no charge of mis-conduct had been made out. The Respondent refused to participate in the inquiry. The Inquiry Officer collected evidence and submitted his report on 24th May, 1969. The Inquiry Officer held the Respondent guilty of the conduct alleged. A show-cause-notice was issued to the Respondent as to why the punishment of discharge should not be imposed on him. The Respondent sent his written explanation to the Appellant Bank on 3rd December, 1969. The Appellant Bank did not accept his explanation and discharged the Respondent by an Order dated 6th December, 1969. The Respondent filed an Appeal before the Appellate Authority. This Appeal was rejected on 30th January, 1970.

5. By a Notification dated 8th January, 1971 the Government of India referred the following dispute to the Industrial Tribunal at Dibrugarh:

"Whether the action of the Management of the State Bank of India Shillong in discharging Shri K. C. Tharakan from the Bank service w.e.f. 6.12.79 was justified? If not to what relief he entitled."

The Notification had been issued u/s 7 read with Rule 5 of the Industrial Disputes Act. By the said Notification, one Shri G. N. Dorah was appointed as the Presiding Officer of this Tribunal.

6. On 27th December, 1974 the Respondent raised a preliminary objection and insisted that the same be adjudicated first. His preliminary objection was that charge framed did not constitute mis- conduct and, therefore, he could not have been discharged. The Tribunal, by its Order dated 27th December, 1974, held that at this stage it could not be said that no offence has been made out. The Tribunal directed the trial to proceed. The Respondent challenged this Order by filing a Writ Petition No. 615 of 1975. In the Writ Petition he obtained stay of the proceedings before the Industrial Tribunal. The Writ Petition was ultimately dismissed by the High Court on 10th March, 1988. In its Order, the High Court inter alia held as follows:

"Curiously enough after having obtained a favourable order for making a reference when the reference came to be considered, he took a plea that the reference itself is not proper. According to the impugned order the petitioner

made an objection to the maintainability of the reference on the ground that the omission or commission imputed to him even if proved do not amount to offence under the standing order of the Bank and as such the Industrial Disputes Act is not attracted in this case. It is very difficult to understand and appreciate this objection, because if the reference is not maintainable at all then the fate of the employee would be that having been discharged, he would remain out of employment. We have not been able to understand why such a objection was made by the workman to his own detriment and peril from 1971"

The High Court also held that it was for the Industrial Tribunal to consider whether there was any misconduct and remitted the matter back to the Tribunal.

7. During the pendency of the Writ Petition the said Shri G. N. Dorah had retired. The Government of Assam by a Notification dated 30th August, 1988 appointed one Shri I. P. Brahma as the Presiding Officer. The Respondent appeared before the Tribunal on 19th April, 1989, 17th August, 1989 and 20th November, 1989, on which date he did not raise any objections regarding jurisdiction of the Tribunal. As the matter was being adjourned on a number of occasions, the Tribunal gave a final date of hearing on 27th December, 1989. The Tribunal made it clear that if the parties did not appear on the next occasion it would proceed ex-parte. On 27th December, 1989 also the Respondent remained absent. The case was then posted to 23rd January, 1990.

8. On 23rd January, 1990 the Respondent still remained absent. Therefore, the Tribunal proceeded ex-parte, considered all the material before it and held that the discharge of the Respondent was justified. In its Judgment, the Tribunal noted that the award had been delayed for a period of 20 years because (a) the Respondent had stalled the proceedings by getting a stay from the High Court in Writ Petition No. 615 of 1975 and (b) that the Respondent had sought adjournments on various occasions and had then not appeared.

9. After the award is passed, the Respondent does nothing till 26th September, 1994. After more than 4 years, he files a Review Petition for setting aside the ex-parte award. Even in this Review Application he does not urge that the Tribunal had no jurisdiction inasmuch as there was no properly appointed officer. At this stage, it must be mentioned that the Respondent seeks to justify this delay on the ground that his father had fallen ill and ultimately died. It was submitted that the Respondent was required to look after his father in Kerala. The Respondent's father died on 29th December, 1989. There is no reason why the Respondent could not have filed the Review Petition earlier. The Review Petition was ultimately dismissed on 22nd September, 1997.

10. On 24th February, 1998 the Respondent filed Writ Petition No. 16(SH) of 1998. In this Writ Petition he also makes IIB a Respondent party. He, inter alia, prays that (i) the award dated 22.9.97 and 23.1.90 passed by the learned Presiding Officer, Industrial Tribunal; (ii) the charge sheet dated 8.4.69 and the dismissal order dated 6.12.69; and (iii) the order dated 5.3.69 of the Indian

Institute of Bankers canceling the result of the examination be all quashed and set aside.

11. To be noted that the Order of IIB was passed as far back as 5th March, 1989. It was being challenged by him for the first time after 29 years. The High Court by its Judgment dated 8th February, 2000 allows the Writ Petition and quashes the Award dated 23rd January, 1990. The High Court also quashes the Order of IIB dated 5th March, 1969 and the Order of discharge. The High Court directs reinstatement with full back wages.

12. The Appellant Bank filed a Writ Appeal. Pending this Writ Appeal payment of back wages was stayed but the Order of reinstatement was not stayed. The Appellant Bank, thus, reinstated the Respondent on payment of current salary. The Respondent reported for duty on 18th July, 2000, worked for a few days and then till January, 2001 he remained absent for a period of 113 days.

13. On 8th August, 2000 the Respondent moved an Application before the High Court complaining of non-compliance of the interim Order dated 24th April, 2000. The High Court by its Order dated 18th August, 2000 directed the Appellant Bank to consider the grievance of the Respondent within two months. Pursuant to the directions, the Appellant Bank considered the claim of the Respondent to be paid at the maximum of the revised clerical scale and gave him that pay. The Respondents' other claim to be promoted was not acceded to.

14. The Respondent thus filed another complaint against the Appellant Bank for non-compliance of the Order dated 18th August, 2000. This Application was dismissed by the Division Bench of the High Court on 4th November, 2000. The High Court held that it could not be said that there was no compliance. The Respondent again remained absent from work for the period 9th February, 2001 to 17th February, 2001 and then from 19th February, 2001 to 29th December, 2001. It appears that he regularly send sick notes. It appears that when he was directed to appear before the Medical Board he did not comply.

15. On 22nd November, 2001 the Division Bench dismissed the Appeal filed by the Appellant Bank. It is this Order which is impugned before us. The Respondent filed a Contempt Petition alleging non-compliance of the Orders dated 24th April, 2000 and 18th August, 2000. Notice was issued in that said Contempt Petition. Being aggrieved by the issuance of notice, the Appellants filed an Appeal. The Appellate Court has kept the Appeal pending till the disposal of this Appeal.

16. To complete narration of facts it must be mentioned that the Respondent has, on 8th November, 2002, lodged a complaint in this Court alleging fraud in producing the copy of the Government Notification dated 8th January, 1971. According to the Respondent the fraud is that the document filed in this Court does not contain the title of the Gauhati High Court. It is also claimed that a copy of the original Notification had been sent to a number of parties whose names were shown in the original Notification but are missing from the copy produced in this Court. In our view, this is an absolutely frivolous complaint. It must be

mentioned that on these grounds the Respondent had sought to file a contempt petition. The learned Attorney General correctly refused to grant sanction. Therefore, an allegation is made that the permission is being refused malafide as at the SLP stage, the Solicitor General had appeared for the Appellant Bank. It is suggested that permission is being refused as the Offices of the Attorney General and Solicitor General are the same. In our view, all these allegations are absolutely frivolous. There is no contempt as alleged. There is no fraud. When a copy of a Notification is being produced before a Court it is the body of the Notification which is required to be produced. The original Notification would not contain the name of the High Court. It is only the exhibit in that Court which contains the name of that High Court. The name of the High Court is not required to be reproduced in this Court when relying on the Notification. Similarly, it is not at all necessary that the names of the parties to whom copies had been sent must be reproduced. We therefore hold that the Attorney General had correctly refused permission and the Contempt Petition cannot be registered and will stand dismissed. The complaint made by the Respondent deserves to be and is dismissed.

17. The Respondent has also filed I.A. No. 3 of 2003 for direction to the Appellant Bank to comply with the Order of the High Court. This Application has been kept with the hearing of the Appeal. As for reasons set out hereafter we are allowing the Appeal, this Application will stand dismissed. The Respondent has also filed I.A. No. 4 of 2003 for revocation of leave granted by this Court. As we have already finally heard the Appeal and the parties at great length, this Application will stand dismissed.

18. The Appellant Bank has filed I.A. No. 7 of 2005. This is for permission to produce additional documents. Both the parties, during the course of their arguments, wanted to and referred to these documents. Therefore, Court has looked at these documents. It must be mentioned that Respondent had also produced two compilations containing numerous documents. Court has also looked at those documents.

19. The Division Bench in the impugned Judgment is mainly relying on the observations of the learned single Judge in order to dismiss the Appeal. Therefore, it becomes necessary to see the Judgment of the learned Single Judge.

20. The first aspect which must be dealt with is that the Respondent has challenged the Order dated 5th March, 1969 of IIB for the first time in this Writ Petition. Thus, this challenge was after a period of 29 years. IIB had been made a party. IIB objected to the Order being passed against it. The learned Single Judge deems it appropriate to pass the Order against IIB in the following terms:

"There should hardly be any doubt that the order of the IIB, which is under challenge in the writ petition, was passed in the year 1969 whereas the writ petition has been filed by the petitioner in the year 1998, after about 30 years. Such long gap between the time of passing of the order and filing of writ petition

cannot ordinarily be overlooked. The Court must have very strong reasons to entertain a challenge to that order after such long time. In the writ petition petitioner has not been able to give any special reason for such a long delay caused by him in filing the writ petition for challenging the order of the IIB, what has orally been contended by the petitioner in this context is that the orders passed by the IIB and by the SBI being result of the same incident and emanating from a common enquiry conducted by the SBI through Sri B. K. Ghosh, no separate proceeding could have been initiated by him for impugning the order of the IIB. This contention of the petitioner has sufficient force. Though the writ petition has been filed basically for impugning the award given by the Industrial Tribunal but what was involved in the proceedings before the Tribunal was the alleged wrongful discharge of the petitioner from Banks service, it was for this reason, that so much time was taken by the petitioner in filing the writ petition. Facts leading to petitioner's discharge from service and for the cancellation of his examination result of 1968 examination and debarring him from 1969, 1970 and 1971 examinations of the IIB are almost the same except for the fact that petitioner's discharge from service was basically for his filing the complaint with the IIB against Shri T. D. Barua, agent of the SBI in relation to his role as supervisor of 1968 examination. The incident leading to both the actions by the SBI and by the IIB though is one still there existed somewhat separate grounds for action taken by the IIB and the SBI against the petitioner."

21. Thus the Court itself notes that the Respondent has not been able to give any special reason for filing a Writ Petition against IIB after such a long delay. The oral explanation that the Order passed by the IIB and by the Appellant Bank is arising out of the same incident and emanating from a common enquiry is one which was merely required to be stated to be rejected. It is beyond comprehension how the learned Single Judge could have accepted such an explanation. The Respondent had raised a dispute which had been referred to the Industrial Tribunal. The only question which had been referred to was whether the action of the Management in discharging the Respondent was justified. In such proceedings IIB's Order would neither be considered or dealt with. Even if the Respondent had succeeded before the Tribunal, the Order of the IIB would have still stood. The Respondent could have challenged that Order in a Court of competent jurisdiction if he had so desired. Such a challenge had nothing to do with the action taken by the Appellant Bank. The enquiry was also not the same. IIB passed its Order on the basis of some inquiry conducted by it. The Appellant Bank did not act on that inquiry or the report. From the inquiry report, it can be seen that the Respondent had asked for a copy of the report of IIB. It had been held that that inquiry report was entirely irrelevant for the purposes of the disciplinary proceedings initiated by the Appellant Bank. Further, the action of the Appellant Bank was not arising out of the same incident. IIB took action on the ground that the Respondent had cheated during the course of the examination. The Appellant Bank took action on the ground that serious allegations were made against a senior officer which affected the interest of the Bank. The two causes of

action were separate and distinct. It is surprising that the learned Single Judge could not understand such a basic thing and has chosen to pass an Order against IIB after a period of 29 years. The learned Single Judge has also overlooked the fact that IIB is a private body against whom a Writ could not lie. What was also ignored was that in the earlier Writ Petition No. 615 of 1975 the Respondent had made IIB a party but had chosen not to ask for any reliefs against them. Having chosen not to ask for any reliefs in the earlier Writ Petition, it was not open to the Respondent to claim reliefs in another Writ Petition filed subsequently. The Order passed against IIB is entirely unsustainable and unjustified.

22. On merits, the learned Single Judge holds that no charge has been made out inasmuch as under the Standing Orders disciplinary action could only be taken provided the act was prejudicial to the interest of the Bank. The learned Single Judge holds that the letters which were written by the Respondent were in respect of Shri Barua's conduct as Invigilator in the examination being held by IIB. The learned Single Judge holds that the said Mr. Barua was acting in a different capacity and the complaint by the Respondent was also as an examinee in the examination. The learned Single Judge holds that the Appellant Bank was not concerned with the entire incident as the allegations against Shri Barua being not in his capacity as an Officer of the Bank but in his capacity as an Invigilator. The learned Single Judge thus holds that no charge had been made out. Attention of the learned Single Judge was drawn to a decision of this Court in the case of Govinda Menon Vs. Union of India (UOI), . In this case, disciplinary action was taken against a person in respect of something done by him at a time when he was on deputation. An argument that the act committed while on deputation could not be the basis of disciplinary action against that person was repelled by this Court. It was held that it was not necessary that disciplinary action should only be in respect of acts committed in the course of discharge of his duty in that organization. It was held that disciplinary action could be taken for any act or omission, even if committed somewhere else, which reflects on the reputation of the Officer or his integrity, good faith or devotion to duty. This authority squarely covered the dispute in hand. Yet the learned Single Judge chooses to differentiate this authority on the ground that there is no similarity in the provisions of the Service Rules in the two cases and on the ground that the Standing Order does not contain provisions permitting disciplinary action for acts not done in the course of duty. The learned Single Judge fails to appreciate that the question was not whether Service Rules or Standing Orders contained such a provision. The ratio of the Judgment, which was binding on the learned Single Judge, was that the concerned act or omission need not be during the discharge of duties of the organization. An allegation of corruption against a senior Officer would affect the interest of the Bank. In our view, it makes no difference whether the allegation of corruption is in respect of the work of the Bank or in respect of the conduct/work of the Officer outside the Bank. The reputation of the Bank gets affected if an allegation is made that its Officer/s are corrupt. Thus, an allegation of corruption against a senior Officer is one which would affect the

interest of the Bank. The learned Single Judge was thus absolutely wrong in holding that no charge had been made out.

23. Even otherwise, it must be remembered that the Respondent had raised a preliminary objection on the ground that no charge had been made out. The Tribunal had dismissed that objection. The Respondent had filed a Writ Petition. The High Court, by its Order dated 10th March, 1988, dismissed that Writ Petition. The High Court held that it was a frivolous objection. Thus the question whether the charge was made out or not had been finally decided against the Respondent. It was no longer open to the Respondent to raise the same contention again. Also to be remembered that this was a Writ Petition against the Award passed by the Industrial Tribunal. The jurisdiction of the Writ Court was limited. The Writ Court was not sitting in Appeal over the Award of the Industrial Tribunal. As it has been finally held in the earlier Writ Petition that the charge was maintainable, all that was required to be seen was whether the principles of natural justice had been followed and whether there was sufficient evidence to show that the charge was proved. In this case, there was no question of violation of principles of natural justice. The Respondent had been given the charge-sheet. He had been given an opportunity to appear before the Inquiry Committee. He chose to stay away from the inquiry proceedings. He was thereafter given a show- cause-notice. He replied to that show-cause-notice. His reply was considered and he was thereafter discharged. He has then filed an Appeal. The Appeal filed by the Respondent was also dismissed. Even before the Industrial Tribunal he remains absent without any just cause. Thus there was no violation of the principles of natural justice. In the inquiry proceedings evidence had been lead to show that the Respondent had mis-conducted himself. It is on the basis of the material available that the Inquiry Officer had submitted his report. It is on the basis of material available that the Industrial Tribunal passed its Award. Thus, the interference by the High Court was uncalled for.

24. For what is stated above, it is clear that the High Court erred in directing reinstatement. We maintain that, on facts of this case, discharge was justified. However, even if for the sake of argument it is accepted that an Order of reinstatement was required to be passed, this was a fit case where there should have been no order directing payment of full back wages. The Respondent himself had got the proceedings, before the Industrial Tribunal, stalled from 1974 to 1988 by raising a frivolous objection. Thereafter it was the Respondent who kept on asking for adjournments and finally did not appear before the Industrial Tribunal. Even though the Award was passed on 23rd January, 1990 the Review Petition was filed only on 26th September, 1994, i.e. after four years. Thus, it is the Respondent who is to blame for the gross laches and delay. In such circumstances back wages could never have been granted. Also, during the period the Appeal was pending before the High Court, the Appellant Bank learnt that the Respondent was gainfully employed. It appears that Respondent floated a Company by name Savio System Pvt. Ltd. and became its Managing Director. He borrowed monies from a Bank in the name of the Company. The Respondent

dishonestly never pointed out these facts when he made a claim for back wages. After the Appellants bring it to the notice of the Appellate Court the Respondent admits that he had floated the Company and become the Managing Director. He, however, claims that this was only to help his sister invest her funds and that he was receiving no monies from the Company. This story is unbelievable. These facts were before the Appellate Court. Unfortunately, they have not adverted to or dealt with them.

25. That brings us to the question whether, the newly constituted Tribunal, with Shri I. P. Brahma as the Presiding Officer, was properly constituted and had jurisdiction to entertain and try the dispute. In view of our findings on facts, as given above, this question has become academic. We therefore express no opinion on this aspect and leave the question open.

26. For the above reasons, we find that the impugned Order as well as the Orders of the learned Single Judge are unsustainable and are accordingly set aside. The Award of the Industrial Tribunal dated 23rd January, 1990 is restored. The Appeal stands disposed of accordingly. There will be no order as to costs.