

(2010) 07 DEL CK 0307
In the Delhi High Court
Case No : Writ Petition (C) 1298 of 1987

State Bank of India

APPELLANT

Vs

Sh. C.P. Kanak and Another

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 38, 39, 43
Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2010) 4 LLJ 563

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajiv Kapur, for the Appellant; Sumant Bharadwaj and Archana Pathak Dave, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner Bank by this writ petition impugns the award dated 23rd February, 1987 of the Industrial Tribunal, though holding the disciplinary proceedings held prior to the dismissal of the respondent No. 1 workman to be fair and proper and in accordance with the principles of natural justice and though also holding the respondent No. 1 workman guilty of temporary embezzlement, as also found by the Inquiry Officer and the Disciplinary Authority of the petitioner Bank, but holding the punishment of termination of service by way of discharge or dismissal to be harsh and quashing the same and directing the petitioner Bank to reinstate the respondent No. 1 workman with continuity of service but without any back wages.

2. The respondent No. 1 workman joined the employment of the petitioner Bank as a Clerk on 22nd August, 1978 and was posted at the Khurja Branch of the petitioner Bank on 3rd October, 1978 and assigned to the cash department. On 11th April, 1979 he was charged with the misappropriation committed on 3rd October, 1978 i.e. on the very first day of his posting as aforesaid in the Khurja Branch of the petitioner Bank. The charge against the respondent No. 1 workman

was that on 3rd October, 1978, a cash deposit voucher of Rs. 5,000/- with cash was tendered at the counter manned by him for credit to the Savings Bank account of one Smt. Prabha Aggarwal; it was the case of the petitioner Bank that the respondent No. 1 workman deposited only Rs. 1,500/- out of the said Rs. 5,000/-, by altering the amount in words and figures indicated on the voucher and by affixing the receipt stamps on the voucher in a way so as to conceal the said alteration. It was further the charge that the respondent No. 1 workman thereby misappropriated the balance of Rs. 3,500/-. It was yet further the charge that the respondent No. 1 workman however on 7th October, 1978 i.e. barely after four days, filled in a voucher for Rs. 3,500/- and managed to deposit the same in the account of the aforesaid Smt. Prabha Aggarwal. Before the Labour Court, it was the further case of the petitioner Bank that the account holder Smt. Prabha Aggarwal had issued cheques on aforesaid account and which were returned dishonored on account of misappropriation of Rs. 3,500/- aforesaid by the respondent No. 1 workman and in which regard a complaint was made by the account holder on 5th October, 1978 and to avoid detection and prosecution, the respondent No. 1 workman on 7th October, 1978 deposited Rs. 3,500/- as aforesaid in the account of Smt. Prabha Aggarwal.

3. The aforesaid findings have now attained finality, the respondent No. 1 workman having not challenged the award.

4. The Industrial Tribunal inspite of holding that the banks are institutions of trust and confidence and the consequence of an employee found guilty of misappropriation would be punishment of termination of service by discharge or dismissal, altered the punishment as aforesaid for the reason of three extenuating circumstances; firstly, for the reason of the respondent No. 1 workman being a member of a Scheduled Caste; secondly, for the reason of the respondent No. 1 workman as on 3rd October, 1978 having very little experience having joined the employment of the petitioner Bank only on 22nd August, 1978 and lastly for the reason of contributory mistake of the petitioner Bank in, on the very first day of the posting of respondent No. 1 workman at the Khurja Branch, posting him on the cash counter when he was totally inexperienced. Yet, another extenuating circumstance stated was of no loss having been caused to the petitioner Bank because of the amount embezzled having been deposited by the respondent No. 1 workman after a lapse of four days only.

5. This Court vide ex parte order dated 8th May, 1987 issued Rule in the writ petition and also stayed the operation of the award aforesaid. The respondent No. 1 workman applied u/s 17B of the ID Act and vide order dated 15th December, 1987 the petitioner Bank was directed to pay the last drawn salary from the date of the award to the respondent No. 1 workman. The subsequent application of the respondent No. 1 workman for payment of amounts higher than the last drawn salary u/s 17B was dismissed. The counsels for the parties have been heard.

6. The scope of the writ petition in the circumstances aforesaid, is limited i.e.

whether the Industrial Tribunal was justified in interfering with the punishment meted out to the respondent No. 1 workman inspite of holding a valid departmental enquiry preceding the order of termination of service to have been held and inspite of also holding the respondent No. 1 workman guilty of the serious misconduct of embezzlement of funds of the customers of the petitioner Bank.

7. The counsel for the petitioner Bank contends that the same cannot be done. Arguments were addressed relying on the following judgments:

(i) State of Meghalaya and Others Vs. Mecken Singh N. Marak, laying down that while considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental enquiry, the court should also take into consideration the mental set-up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision-making process if the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently and misconduct, in such cases has to be dealt with iron hands.

(ii) State Bank of India and Others Vs. Ramesh Dinkar Punde, laying down that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired and further that it is for this reason that when a bank officer commits misconduct, for his personal needs and against the interest of the bank and the depositors, he must be dealt with iron hand and he does not deserve to be dealt with leniently.

(iii) Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, laying down that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards the court would not go into the correctness of the choice made by the administrator and the court should not substitute its decision for that of the administrator. The scope of judicial review was held to be limited to the deficiency in the decision-making process and not the decision.

(iv) Ganesh Santa Ram Sirur Vs. State Bank of India and Another, to the effect that employees of a bank are expected to act and discharge their functions in accordance with the rules and regulations of the bank and acting beyond one's authority is by itself a breach of discipline and trust and a misconduct.

(v) Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai, 5 on the proposition that interference is not permissible unless the orders passed by the quasi judicial authority are clearly unreasonable or perverse or manifestly illegal or grossly unjust. It was further held that loss of confidence is the primary factor and not the amount of money misappropriated and in such cases there is no place for generosity or misplaced sympathy on the part of judicial forums and

interfering therewith or with the quantum of punishment awarded by the disciplinary and the Appellate Authority. In this case also the delinquent official was dealing with public money and engaging in financial transactions and acting in a fiduciary capacity and considering the said factors it was held that highest degree of integrity and trustworthiness is a must and unexceptionable. The counsel for the petitioner Bank contends that the same is the position in the present case.

(vi) Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, on the proposition that no organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline and no proof of loss is really necessary.

(vii) Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another,

(viii) V. Ramana Vs. A.P.S.R.T.C. and Others,

(ix) Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, all reiterating the law as laid down in the judgments aforesaid.

8. The counsel for the petitioner Bank on inquiry informed that the respondent No. 1 workman would be now 55 years of age and the retirement age in the bank is 60 years.

9. The counsel for the respondent No. 1 workman sought to argue on the merits of the guilt of the respondent No. 1 workman held proved by the Inquiry Officer, Disciplinary Authority and upheld by the Industrial Tribunal. However in view of the finding of the Industrial Tribunal of the domestic enquiry held preceding the order of dismissal of the respondent No. 1 workman to be valid and justified and there being no challenge to the same even in the counter affidavit of the respondent No. 1 workman, this Court cannot revisit the said finding.

10. Though there is considerable force in the judgments supra cited by the counsel for the petitioner Bank but a careful perusal thereof reveals that all are cases of writ petitions preferred with respect to domestic enquiry/departmental proceedings and none of the cited cases are of variation of the punishment by the Industrial Adjudicator, as in the present case. The Courts in all the aforesaid cited cases were concerned with the powers of judicial review of the punishment meted out by the Disciplinary Authorities. However, there is a vast difference in the powers of the High Court in judicial review of the orders of the Disciplinary Authorities and the powers of the Industrial Adjudicator. Section 11A of the ID Act, 1947 is as under:

11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or

dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

11. The Supreme Court recently in Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., had occasion to consider the scope of Section 11A (supra). It was held that though after the introduction of Section 11A in the ID Act, certain amount of discretion is vested in the Industrial Adjudicator in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct but the discretion is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of the any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Industrial Adjudicator to reduce the punishment. It was further held that in the absence of any such factor existing, the Industrial Adjudicator cannot, by way of sympathy alone exercise the power u/s 11A and reduce the punishment.

12. In the present case, the Industrial Tribunal has not acted on the consideration of sympathy alone but has listed out the four extenuating/mitigating circumstances for interfering with the punishment imposed by the Disciplinary Authority of the petitioner Bank. Though one of such circumstance is of the respondent No. 1 workman being a member of Scheduled Caste but that also cannot be said to be a sympathetic factor alone. It is a settled position that scheduled castes have suffered disadvantages and have been denied facilities for development and growth; they have been held to require protective preferences, facilities and benefits so as to enable them to compete on equal terms with the more advantageous and developed section of the community. In the entirety of the facts in the present case, and especially considering the defence of the respondent No. 1 workman though disbelieved, the lack of experience/opportunity/avenues of development available to the respondent No. 1 workman was contributory to the incident aforesaid, though undoubtedly a misconduct.

13. I may notice that on the request of the respondent No. 1 workman, the petitioner Bank has filed before this Court a photocopy of the voucher. It has further been revealed that out of Rs. 5,000/- aforesaid tendered for deposit in the Bank Account of Smt. Prabha Aggarwal, Rs. 1,500/- was by way of a bearer cheque issued by the husband of the said account holder drawn on the same Bank and Rs. 3,500/- was by way of cash. Though the amount mentioned in words on the voucher is Rs. 5,000/- but the amount in cash in hand is clearly written as Rs. 1,500/-. There does not appear to be any attempt of fudging as

was the charge. The possibility of the respondent No. 1 workman on his first day at the cash counter getting confused by deposit under a single voucher of a bearer cheque of Rs. 1,500/- and cash of Rs. 3,500/- cannot be ruled out. It is further the case of the respondent No. 1 workman that the subsequent voucher dated 7th October, 1978 of deposit of Rs. 3,500/- though in his hand was at the instance of the other officers of the petitioner Bank.

14. The powers of the Industrial Adjudicator u/s 11A are certainly wider than the powers of this Court under Article 226 of the judicial review as held in *U.B. Gadhe and Others Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd.*, as under:

The High Court, as noted above, has not considered the case in the background of Section 11A of the Act. u/s 11A, wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case, whereas in the writ jurisdiction it is extremely limited.

Thus, the judgments aforesaid cited by the petitioner Bank with respect to the exercise of power by this Court under Article 226 cannot apply to the Industrial Adjudicator.

15. The other three extenuating factors given in the impugned award for reducing the punishment also cannot be said to be such which are not relevant or are extraneous. The same fall within the circumstances laid down in *Mahindra and Mahindra Ltd. (supra)* on the existence of which the Industrial Adjudicator becomes entitled to exercise power u/s 11A. Once the power u/s 11A is held to have been exercised validly, the judicial review thereof by this Court is again limited. Without this Court finding the exercise of such power by the Industrial Adjudicator to be illogical, no interference is permissible therein. In *Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)*, it was held:

Wide discretion, is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct reinstatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its powers under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well settled principles laid down by this Court for a writ of certiorari against an order passed by a court or a Tribunal.

In *Harjinder Singh Vs. Punjab State Warehousing Corporation*, , it was held:

Before concluding, we consider it necessary to observe, that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the ID Act and other similar Legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble

of the Constitution and the provisions contained in Part IV thereof in general and Article 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub- serve the common good and also ensure that the workers get their dues.

I am thus, not inclined to interfere with the award impugned in this writ petition.

16. However, that again is not the end of the matter. As noticed above, the respondent No. 1 workman is now over 55 years of age having less than 5 years of service left. He has in the past over 30 years worked with the petitioner Bank barely for a few months. Should, in these circumstances, the award of reinstatement be maintained? Reinstatement in terms of the award is with continuity of service. Reinstating the respondent No. 1 workman today with continuity of service after 30 years would disturb the harmony in the cadres of the petitioner Bank. The respondent No. 1 workman having no experience of working in a bank for the last 30 years cannot be beneficially used by the petitioner Bank. For this circumstance alone, I am inclined to alter the award. It is deemed expedient, only for the aforesaid reasons, to substitute the relief granted of reinstatement with continuity of service though without back wages, with the relief of lump sum compensation in lieu thereof.

17. The compensation in lieu of reinstatement and back wages has to be real and not illusory and has to represent the financial benefits accruing to the petitioner Bank by not so reinstating the respondent No. 1 workman. If the relief of reinstatement were to stand, the petitioner Bank would become liable to pay the emoluments of the respondent No. 1 workman from the date of the award till now or such percentage thereof as may be allowed considering that the respondent No. 1 workman has not worked for the petitioner Bank and after deduction therefrom the amounts paid as aforesaid vide order u/s 17B of the ID Act. The said order was also not at the rate of minimum wages but at the rate of last drawn wages. If the respondent No. 1 workman was reinstated, the petitioner Bank would also become liable to pay his emoluments till the age of his superannuation and also for his family pension. As against this, the possibility of the respondent No. 1 workman having worked and/or engaged in other profitable activities in the last 30 years cannot be ruled out; it is highly unlikely that he has been sitting idle all along. In all these circumstances, in my opinion, the lump sum compensation in lieu of reinstatement with continuity of service, of Rs. 5 lakhs besides the amounts already received u/s 17B is appropriate.

18. The writ petition is accordingly dismissed, but by modifying the relief given in the award impugned in the writ petition, of reinstatement with continuity of service to the relief of payment of lump sum compensation of Rs. 5 lakhs besides the amount already received/due to the respondent No. 1 workman under the order aforesaid u/s 17B of the ID Act. The said amount of Rs. 5 lakhs be paid by the petitioner Bank to the respondent No. 1 workman within six weeks hereof,

failing which the same shall also incur interest at the rate of 9% per annum.

With aforesaid directions, the writ petition is disposed of.

No order as to costs.