

(2022) 08 DEL CK 0056

In the Delhi High Court

Case No : Letter Patent Appeal No. 757 Of 2019, Civil Miscellaneous Application
No. 27793 Of 2022

State Bank Of India

APPELLANT

Vs

V.K. Bakshi

RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11A
Negotiable Instruments Act, 1881 — Section 138, 141

Citation : (2022) 08 DEL CK 0056

Hon'ble Judges : Najmi Waziri, J;Vikas Mahajan, J

Bench : Division Bench

Advocate : P.B.A. Srinivasan, Parth Tandon, Rajiv Agarwal, Meghna De, N.
Bhushan, L. Gangmei

Final Decision : Dismissed

Judgement

Vikas Mahajan, J

1. The question for consideration of this intra-court appeal is: Whether the Labour Court could reduce the penalty from 'removal from service' to 'stoppage of three increments with cumulative effect', in exercise of its discretionary jurisdiction under Section 11 A of the Industrial Disputes Act, 1947?

2. The admitted facts are: (i) the respondent was posted as Senior Assistant in the appellant/bank; (ii) while working with the appellant/bank, he had taken certain loans from different financial institutions/Thrift & Credit Societies without the approval of the competent authority and had also availed the facility of credit card from M/s. SBI Cards & Payment Services Pvt. Ltd., the outstanding against which, he failed to repay; and (iii) even the cheques issued by him towards the repayment of some of the credit facilities were returned unpaid by the drawee bank, with the objection "insufficient funds".

3. A chargesheet was issued against the respondent on 27.03.2006 by the

appellant alleging major misconduct, enumerating the following charges:-

"1. SBI Cards & payment Services Pvt. Ltd. have advised that you have not made the payment against the SBI Credit Card No.0004006661011723314 since January 2004 despite various communications from them and by Zonal Office/branch. The present outstandings there against are Rs.28,181.35.

2. You have issued undernoted cheques without maintain sufficient crediting your account which were returned with the objection 'Insufficient Funds' by Shakti Nagar branch:

(i) Cheque No.572915 dated 18.01.2015 for Rs. 11,020.00 favouring Northern India Paint Colour & Varsney Co. Ltd. returned on 12.05.2005.

(ii) Cheque No.110898 dated 15.06.2005 for Rs.1466.00 favouring G.E. Countrywide Consumers Financial Services Ltd. returned on 16.06.2005.

3. You have raised loan from Everglad Chit Funds Pvt. Ltd. without obtaining specific approval from the competent authority. In this connection, an attachment order issued on 27.09.2003 by Civil Judge, Tis Hazari, Delhi for attachment of your salary to the extent of Rs.59,495/- due to the decree holder M/s Everglad Chit Funds Pvt. Ltd. was received at out Shakti Nagar Branch. Monthly instalment of Rs.2000/- of your salary is being remitted to the court and Rs.20,000/- (Approx) have so far been appropriated.

4. You raised loan of Rs.50,000/- from Indian National Co-op (NA)Thrift & Credit Society Ltd. Hissar on 04.07.2003 without seeking prior permission of the bank. Further, you issued an Account Payee cheque no. 403411 dated 25.09.2004 drawn of SBI, GT Karnal Road, Delhi for Rs.77,240/- in favour of the above society. Before the cheque could be presented, you closed the account.You were served with a legal notice on 13.10.2004 under section 138/141 of Negotiable Instruments Act on 01.10.2005, Hissar and Delhi Police Officials came to Shakti Nagar branch with non-bailable warrants issued by Judicial Magistrate, Hissar to arrest you and took you away at 2:00 pm.

5. The total deduction from the salary is 81.07% against the Bank's extent instructions that total deductions will not be more than 60% of the gross salary.

6. You have raised loan from undernoted Thrift & Credit Societies whereas as per extent instructions an employee cannot be member of more than one T & C Society:

(i) Bank Staff Co-op Urban SE T& C Society Ltd., Hissar.

(ii) International Co-op Non Agriculture T & C Society Ltd., Hissar.

(iii) ECBE Staff Co-op Credit Society Ltd., Meerut.

(iv) Indian National Co-op Non. Agri. T & C Society Ltd., Hissar.

(v) Bhartiya State Bank Karyakarta Co-op T& C Society Ltd., Kirti Nagar.

(vi) SBI Employees T & C Society Ltd., Ranjit Nagar, Delhi.

4. In the departmental enquiry which ensued, all the charges were proven against the respondent/workman, leading to imposition of penalty of 'removal from service'. Being aggrieved by the said action, the respondent/workman raised an industrial dispute and reference was made under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

5. Before the Labour Court, the respondent/workman challenged the order of termination inter alia on the ground that the enquiry was not conducted in a fair and proper manner. Based on the pleadings, the Labour Court framed the following issues:

"(i) Whether the enquiry conducted by the Bank was just, fair and proper?

(ii) Whether punishment awarded to the claimant was proportionate to his misconduct?

(iii) As in terms of reference.

(iv) Relief."

6. In its written statement, the appellant sought permission to prove the misconduct against the claimant on merits, hence it was afforded an opportunity to adduce evidence in respect of the charges mentioned above.

7. Having regard to the evidence on record, the Labour Court opined that the respondent/workman had flouted banking norms by not obtaining the necessary approval from the competent authority before raising of loans. However, taking into account: (i) the justification given by the respondent/workman for availing various credit facilities; (ii) the fact that respondent/workman was not guilty of any charge involving moral turpitude; (iii) the loans which he had raised without prior approval of the competent authority of the bank, and (iv) other overdue loan amounts, have now been repaid, the Labour Court substituted the punishment of 'removal from service' with 'stoppage of three increments with cumulative effect'.

8. The appellant impugned the said Award by way of a writ petition. The learned Single Judge did not find any reason to interfere with the discretion exercised by the Labour Court and accordingly dismissed the writ petition. The management's LPA impugns the Award and the dismissal of the writ petition.

9. Mr. P.B.A. Srinivasan, the learned counsel for the appellant contended that: (i) the Award of the the Labour Court as well as the judgment of the learned Single Judge have erred on jurisdiction: (ii) most of the charges against the respondent were proven, the workman has admitted his guilt in his reply to the charge sheet; (iii) the power under Section 11A of the Act is to be exercised judicially and not arbitrarily; (iv) the Labour Court could alter the punishment imposed by the employer only if it was satisfied about the necessity to interfere and any such satisfaction or interference must be supported by reasons and (v) in the present

case the interference by the Labour Court under Section 11A of the Act is not supported by any reasons. Therefore, the Labour Court ought not to have reduced the penalty. In support of this contentions, he place reliance on the decision of this Court in *Municipal Corporation of Delhi Vs. Daulat Ram & Anr.*, ILR (2004) II DELHI 203.

10. Mr. Rajiv Agarwal, the learned counsel for the respondent, refutes the appellant's contentions and says that the impugned Award and the order of the learned Single Judge need no interference. He contends that the credit facilities availed by the respondent were under compelling circumstances i.e. for the treatment of his daughter; indeed, a finding has also been recorded by the Labour Court that the respondent is not guilty of any charge involving moral turpitude and that the amount he had borrowed from various financial institutions stood repaid; therefore, the Labour Court was right in exercising power under Section 11A of the Act. He submits that there is no merit in the appeal.

11. Before proceeding further to decide the controversy at hand it will be apt to refer to the provisions of Section 11A of the Act which reads 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 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 proceedings 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."

12. The law, on the scope of power of the Labour Court, to vary and reduce the punishment in exercise of its discretionary jurisdiction under Section 11 A of the Industrial Disputes Act, 1947 is quite clear. However, two decisions of the Supreme Court which are apposite to the question involved in this case, can profitably be referred to. In *Mahindra and Mahindra Ltd. V. N.B. Narawade*, (2005) 3 SCC 134, a three judge bench of the Supreme Court, has observed as under:

"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of

this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A 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 any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment.....”

13. In *Life Insurance Corporation of India Vs. R. Suresh*, (2008) 11 SCC 319, the Supreme Court held as under:-

“31. An Industrial Court in terms of Section 11-A of the Act exercises a discretionary jurisdiction. Indisputable, discretion must be exercised judiciously. It cannot be based on whims or caprice.

32. Indisputably again, the jurisdiction must be exercised having regard to all relevant factors in mind. In exercising such jurisdiction, the nature of the misconducts alleged, the conduct of the parties, the manner in which the enquiry proceeding had been conducted may be held to be relevant factors. A misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own facts. In given cases, even the doctrine of proportionality may be invoked.”

14. In *Municipal Corporation of Delhi (supra)*, the decision relied upon by the learned counsel for the appellant, this Court after a study of the leading cases, summed up the principles governing the exercise of jurisdiction by the Labour Court under Section 11 A of the Act, holds, inter alia, as under:

“35. On the basis of the above discussion, the principles of law on the scope of interference by a Labour Court or Tribunal under Section 11-A of the Act in regard to the quantum of punishment may now be summed up as follows:-

(i) The power conferred by Section 11-A of the Act is wide and comprehensive, and yet only discretionary.

(ii) The Labour Court or Tribunal may alter the punishment imposed by the employer even if misconduct is proved

(iii) Interference by the Labour Court or Tribunal is quantitative enabling it to determine the adequacy or otherwise of the punishment.

(iv) The power is to be exercised judicially, that is, in appropriate cases, as well as judiciously. The power cannot be exercised arbitrarily and interference may take place only if the Labour Court or Tribunal is satisfied about the necessity to interfere.

(v) Any satisfaction or interference by the Labour Court or Tribunal must be supported by reasons and the reasons are subject to judicial review.

(vi) Relevant circumstances such as past conduct may be considered while arriving at a decision, provided they are supported by material on record.

(vii) Interference in the quantum of punishment is not called for on grounds of misplaced or uncalled for sympathy.

(viii) The concept of proportionality and primary review is inherent in Section 11-A of the Act.”

15. We have perused the Award of the Labour Court in the light of the legal principles as enunciated and explained in the above-noted decisions. It has examined each charge against the respondent/workman and sifted through the evidence on record. It has been noted that the allegations against the respondent/workman essentially pertain to raising of loans without seeking prior approval of the competent authority, which fact was also candidly admitted by the respondent/workman in his reply to the charge sheet. The Labour Court also noted the justification given by the respondent/workman that the loans were raised by him on account of illness of his daughter, purchase of a house and establishment of business of his son. With regard to the allegation of respondent's outstanding amount towards one M/s Evergreen Chit Fund Pvt. Ltd., the Award has concluded that the respondent has not borrowed any loan from the said company. In fact, the brother of the respondent took a loan for which the respondent stood as guarantor but due to the untimely death of the said brother, the borrowed amount could not be returned by the borrower. Nevertheless, in time-through installments the due amount stood paid by the respondent/workman. Having regard to the evidence on record, the Labour Court concluded that the respondent/workman had not been found guilty of any charge involving moral turpitude and that the overdue loan amounts stood repaid. Premised on the above factors, it concluded that punishment of 'removal from service' was very grave and severe in nature and was liable to be reduced to 'Stoppage of three increments with cumulative effect'.

16. The relevant paragraph from the Award reads as under:-

“23. Now, the next question which arises for consideration is as to whether the punishment awarded to the claimant is proportionate to the misconduct committed by him. It is clear from evidence on record that the claimant is not guilty of any moral turpitude. He has simply raised loans without seeking prior approval of the competent authority of the bank and the overdue amounts of the loans have been repaid now. In such a situation, the Tribunal is of the considered opinion that punishment of 'removal from service' is very grave and severe in nature and the same is liable to be reduced to 'Stoppage of three increments with cumulative effect'.....”

17. Evidently before altering the punishment, the Labour Court has recorded its satisfaction that the punishment imposed upon the workman is disproportionate to the degree of guilt or wrongdoing of the respondent/workman. Such satisfaction is supported by reasons which are based upon the material on

record. The Labour Court has not committed any error of law. It has exercised its discretion judicially within the parameters of law. Reduction in punishment as ordered by the Labour Court, therefore, needs no interference.

18. In the result, the appeal along with pending applications, if any, is dismissed.