

(2006) 03 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 8141 of 2003

Surat District Co-Operative Bank Ltd.

APPELLANT

Vs

Dinyar Erach Nalladaru and Another

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Banking Regulation Act, 1949 — Section 6(1)
Bombay Industrial Relations Act, 1946 — Section 78
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11A

Citation : (2006) 03 GUJ CK 0040

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : D.G. Chauhan, for Petitioners 1-2, for the Appellant; Party-in-Person for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—This petition, though styled as a petition under Articles 226 and 227 of the Constitution of India, is in effect a petition under Article 227 of the Constitution. The petition challenges the judgment and order dated 18th February, 2003 made by the Industrial Court in Appeal (I.C.) No. 30 of 2000 whereunder award dated 22nd September, 2000 made by the Labour Court, Surat in T. Application No. 399 of 1988 came to be confirmed.

2. The facts in brief are that the respondent was appointed as a clerk on 6th July, 1970 by the petitioner " bank. According to the petitioner-bank, the respondent had been negligent in discharging his duties and was insubordinate to his superiors in the hierarchy of the petitioner - bank, and therefore, vide charge-sheet dated 31st July, 1987 domestic inquiry was initiated against the respondent - workman. The inquiry officer submitted his report on 21st March, 1988 finding the respondent guilty of the charges leveled against him. Thereupon, considering the gravity and the seriousness of the charges which stood proved, a show cause notice dated 9th May, 1988 was issued by the

petitioner-bank calling upon the respondent to explain why his services should not be terminated. On 17th May, 1988 the Bank Staff Committee, after considering the explanation tendered by the respondent, passed a resolution recommending termination of services of the respondent. The petitioner-bank thereupon made an order on 24th May, 1988 terminating the services of the respondent.

3. Against the aforesaid termination order respondent went before the Labour Court by way of T. Application No. 399 of 1988. The Labour Court by its order dated 7th January, 1992 upheld the legality and validity of the domestic inquiry but came to conclusion that the punishment imposed on the respondent-workman was disproportionate, and thus, directed the petitioner-bank to reinstate the respondent to his original post with all consequential benefits and 50% back wages. The petitioner-bank went in appeal before the Industrial Court but failed in the appeal, and by impugned judgment and order dated 18th February, 2003 the award made by the Labour Court came to be confirmed.

4. The learned advocate for the petitioner-bank contended that both the Labour Court and the Industrial Court had misdirected themselves in law and exercised jurisdiction which did not vest in them. That as the proceedings were under the provisions of the Bombay Industrial Relations Act, 1946 (the BIR Act) the Labour Court and the Industrial Court could not have interfered with the punishment given by the management. That the provisions of Section 11A of the Industrial Disputes Act, 1947 (the I.D. Act) could not have been considered by both the subordinate courts. That even if the provisions of Section 11A of the I.D. Act had not been referred to by the subordinate Courts, in effect, the subordinate Courts had exercised powers which are only available u/s 11A of the I.D. Act, and in light of the fact that the language employed by Section 78 of the BIR Act was distinct such powers could not have been exercised, namely, reduction in quantum of punishment or modification of the punishment, especially when both the Labour Court and the Industrial Court had accepted the findings recorded by the inquiry officer. It was further contended that the order of the Labour Court suffered from the vice of absence of reasoning, for interfering with or modifying the punishment meted out by the management and, therefore, also the Industrial Court could not have confirmed the said order. In support of the submissions reliance was placed on:

- i. The Manekchowk & Ahmedabad Mfg. Co. Ltd. v. I.G. Thakore, President, Industrial Court and Anr. 1969 (10) G.L.R. 786;
- ii. Parikshatbhai Madhavbhai Patel v. Division Controller, G.S.R.T.C., Surat 2000 (1) G.L.H. 31;
- iii. New Shorrock Mills Vs. Maheshbhai T. Rao,
- iv. Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, (2003)IILLJ181SC ;

- v. Director General R.P.F. and Others Vs. Ch. Sai Babu,
- vi. State of Karnataka and Others Vs. H. Nagaraj,
- vii. Sarabhai M. Chemicals (S.M. Chemicals & Electronics) Ltd. v. M.S. Ajmere and Anr. 19800 1 L.L.J. 295 (Bom);
- viii. Eastern Electric Trading Company v. Baldev Lal 1975 2 L.L.J. 367;
- ix. Mihir Textile Ltd. v. Narayansing Layaksing 1993(1) GCD 138 (Guj);
- x. Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others,
- xi. U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey,
- xii. Gujarat Mineral Development Corporation Ltd. v. Jayant Shriram Kalal 2000 (3) G.L.H. 419;

5. Resisting the submissions made on behalf of the petitioner the respondent-workman, who appeared as party-in-person, has submitted that the orders made by the Labour Court and the Industrial Court did not require to be interfered with as the same were in accordance with law. It was submitted that the entire exercise of issuance of charge-sheet, conducting of inquiry, holding the respondent guilty and levying the punishment was tainted by mala fides and unfair labour practice. That the respondent had served the petitioner-bank for a period of 18 years with utmost seniority and the services were terminated abruptly without affording a reasonable and sufficient opportunity of hearing. That the inquiry officer had worked under the influence and direction of the petitioner-bank and thus, the inquiry was vitiated. Referring to the charge about putting the customers to inconvenience and alleged complaints from the customers of the petitioner-bank, the respondent-workman submitted that the complaints were from dummy customers and, therefore, in absence of any complaint from a real customer of the bank the entire action was malicious in nature so as to harass the respondent by subjecting him to disciplinary inquiry and punishment. Lastly, it was submitted that despite award of the Labour Court dated 22th September, 2000 the petitioner-bank had not made any payment and the respondent was entitled to the same with either interest or compensation for not complying with award made by the Labour Court. He urged that the stay operating against the execution of the award be vacated forthwith. The respondent-workman has relied on "

- i. Surat Mahila Nagrik Sahakari Bank Ltd. v. Mamtaben M. Joshi 20012 L.L.J. 567 ;
- ii. Agra District Co-operative Bank Ltd. v. Prescribed Authority, Labour Court, U.P. and Ors. AIR 2001 SC 2396;
- iii. Morarjee Gokuldas Spinning & Weaving Co. Ltd. v. Maruti Yeshwant Narvekar and Ors. 20001 L.L.J. 1008 (Bom.); and
- iv. M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad,

6. The Court is aware that in exercise of jurisdiction under Article 227 of the Constitution of India it is not open to the High Court to undertake re-appreciation of evidence if, on the same set of facts and circumstances and evidence, it is possible to arrive at the view adopted by the subordinate Courts merely because the High Court feels that another view is possible in the matter. However, in a case where the Court comes to the conclusion that the view adopted by the subordinate Courts could not have been arrived at by a reasonable person in the backdrop of the factual matrix and the evidence on record it would be a case of transgression of jurisdiction by the subordinate Courts entitling the High Court to intervene.

7. It is an accepted position between the parties that both the Labour Court and the Industrial Court while passing the respective orders have in no uncertain terms come to the conclusion that the domestic inquiry conducted by the management was legal, there was no violation of principles of natural justice. This was recorded by order Exh.13. According to the Labour Court, the only issue which was required to be decided is whether the quantum of punishment was justified in light of the facts and evidence on record. In this connection a brief resume of the decided cases may be undertaken.

8. The Courts have consistently held that is not open to the Labour Court or the Industrial Court to re-appreciate the evidence on record because they do not function as an appellate Court qua the findings recorded by the domestic Court in the inquiry and the only circumstance in which the punishment can be interfered with is : " (i) whether the punishment imposed by the domestic Court is shockingly disproportionate to the offence committed by the delinquent; (ii) when there is absence of good faith; (iii) when the facts and evidence suggest victimization or unfair labour practice; (iv) when the domestic inquiry has been conducted in violation of the principle of natural justice or is based upon a fundamental error; (v) when the materials available on record show that the finding of the domestic Court is without any basis or perverse. That normally awarding of proper punishment for the misconduct proved under the standing orders is the function of the management and the Labour Court or the Industrial Court would not sit in appeal qua the findings recorded by the domestic Court. Another factor which would permit the Labour Court or the Industrial Court to interfere is in a case where it is found that the inquiry procedure is so perverted as to amount to no inquiry at all, but it is not open to the Labour Court or the Industrial Court to substitute its own appraisal of evidence. While adjudging the severity or the adequacy of the punishment qua the nature of the offence committed the Labour Court or the Industrial Court cannot adopt any substantive standard but the same has to be considered from the view point of the management which is required to administer the establishment in accordance with its own rules of functioning. The concept of punishment being shockingly disproportionate only conveys that the punishment is totally irrational in the sense that it was in outrageous defiance of logic or moral standards.

8.1 In the case of Chairman and Managing Director, United Commercial Bank and Ors. (supra) the Apex Court has stated that merely by using the words the punishment is shockingly disproportionate would not meet the requirement of law, but for holding so the Labour Court or the Industrial Court must record reasons for coming to such a conclusion. This requirement is prescribed in light of the fact that the orders of the Labour Court and the Industrial Court are subject to judicial review, and in absence of any reasons it would be virtually impossible to adjudge the validity of the decision. The reasons are the live link between the facts and evidence on record, the controversy in question and the decision or the conclusion arrived at. The reasons would disclose the process of decision making and in a petition under Article 226 or 227 of the Constitution of India the Court is primarily required to ascertain the validity of the decision making process and not the decision itself.

8.2 The aforesaid are all the propositions laid down by the Apex Court and this Court in a situation where the proceedings were based on provisions of Section 78 of the BIR Act. However, even if the provisions of Section 11A of the I.D. Act could be pressed into service, in the case of Parikshatbhai Madhavbhai Patel (supra), Division Bench of this Court stated that same principle would be applicable viz. when there is want of good faith, victimisation, unfair labour practice, etc. and otherwise, the Labour Court or the Industrial Court is not justified in undertaking re-appreciation of the evidence by acting as a Court of appeal and substituting its own judgment, once the inquiry report of the domestic Court is found to be legal and proper.

9. While undertaking a judicial review the Court is required to examine all the relevant factors including the nature of the charges proved against the delinquent, the past conduct, penalty imposed earlier, if any, the nature of duties assigned to the workman having regard to the sensitiveness of the duties, the exactness expected of and the discipline required to be maintained, and the department/establishment in which the delinquent is required to discharge his duties.

10. The facts of the present case must be examined only for the purpose of ascertaining as to whether the decision making process undertaken, both by the Labour Court and the Industrial Court, is in accord with the well settled principles. The Labour Court has recorded in its order that the respondent has not committed any misconduct which can be termed to be grave or serious and hence, considering the lengthy period of service of 18 years, according to the Labour Court, the punishment of dismissal is shockingly disproportionate to the guilt / offence proved against the respondent. Hence, reinstatement was directed. After taking into consideration the past record of the respondent, and the charges mentioned in the charge-sheet dated 31st July, 1987 the Labour Court held that the respondent was entitled to 50% back wages for the period during which he was treated to be continued in service.

11. It is an accepted fact that the respondent was originally charge-sheeted on

8th November, 1979 for -

- a. willful insubordination and disobedience of lawful and reasonable orders of his superior officers;
- b. willfully slowing down performance of the work entrusted;
- c. late attendance and delay in work;
- d. repeatedly committing breach of Rules and Regulations of the bank;
- e. habitual negligence in work causing serious losses to the bank; and
- f. indecent behaviour with customers of the bank

12. The respondent submitted his explanation and on admission of the acts of misconduct the inquiry officer submitted report on 28.01.1980 holding that the charges leveled against the respondent stood proved. Thereupon the Bank Staff Committee took a lenient view of the matter and awarded punishment of stoppage of three increments, but while passing the resolution to the aforesaid effect, on 29.02.1980, the Bank Staff Committee also proposed that in the event the performance of the respondent did not improve within the ensuing six months period the respondent be issued notice for termination of service. The resolution also recorded that the respondent should not be accorded the facility of Staff Housing Society Loan.

DATED : 31.03.2006

13. It is the say of the petitioner-bank that despite the aforesaid position the respondent continued his acts of insubordination, misbehaviour with customers as well as other staff members, and disobeying lawful and reasonable orders of superior officers. In support of the submission, the petitioner-bank has invited attention to the following memoranda issued to the respondent:

01.04.1980

The memo was issued for willful insubordination and slowing down the performance of work and the respondent was warned for termination.

21/22.04.1980

(i) The memo was issued for willful insubordination and disobedience of lawful and reasonable orders of his superiors.

(ii) Willful slowing down performance of work entrusted to him;

(iii) Again, he was warned for termination.

08.08.1980

The Notice was issued for indecent behaviour with staff and customers.

29.09.1980

- (i) The memo was issued for disobedience of lawful orders of his superiors
- (ii) Behaving with a view to cheat the bank.
- (iii) Furnishing incorrect information to the Bank.

22.05.1982

Notice was issued for unauthorised absence for 12 days and he was warned for his negligence.

05.04.1984

Memo was issued for misbehaviour with customers;

24.04.1984

Willful insubordination and disobedience of lawful orders and non-cooperation with staff and customers.

06.05.1985

Memo was issued to improve his indecent behaviour.

14. Finding that there was no improvement, ultimately, on 31st July, 1987 charge-sheet came to be submitted. It is necessary to reproduce the charges in detail for the reasons that follow hereinafter. A rough English translation of the original charge-sheet reads as under:-

CHARGE SHEET Dated: 31-7-87

The Chargesheet for the misconducts of Shri Dinyar Erach Nalladaru, Cashier of the Surat District Co-operative Bank Ltd. Bhatar Branch is as under:

1. On 8-6-87, the Relieving Branch Agent has instructed you to close down the Initial Deposit Account in Bhatar Branch of Nutan Nivas Housing Society and Balance amount of the said account was instructed to be credited in the Current Account of the Society in the Head Office. But, inspite of written instructions and guidelines received by you from the Head Office, you raised flimsy objections and did not act. In this regard, the Joint Accountant has gathered information from the Agent of Bhatar Branch and you were asked to talk on telephone, but you refused to talk and disobeyed the instructions of the Superior Officers and shown discourtesy against the Officer of the Head Office and unauthorisedly kept the Head Office's letter dated 4-7-87 in your custody and caused delay.

2. You are intentionally doing work slowly. After signing Attendance Register, without permission you are leaving office for your personal work and start cash work at 9.45 hours instead of 9.30 hours. You are not helping in other work, except the work assigned to you. You are not helping in closing work. You are not responding in respect of the work assigned to you by the Agent. On 26-6-87, you did not complete Trial Balance and Registers in time.

3. On 7-7-87, the cash limit of the Branch exceeded Rs. 60,000/-. On such information, the Agent informed the Head Office on telephone to deposit the excess amount. But, in the afternoon at 1.35 p.m., you informed that there is no excess cash more than Rs. 65,000/-. Thereafter, at about 1.55 p.m. you informed the Agent that there is a cash of Rs. 85,000/- and accordingly the Agent asked the Head Office on telephone to make arrangement for depositing the amount. Shri Mukesh Desai came to collect the cash, but you informed that the bundles are yet to be stitched. You did not ask Peon Ganpat Baliram to stitch the bundles and therefore the cash could not be handed over to the Clerk of the Head Office and as a result, there was delay in collecting cash from other Branches. The cash could be sent only when Peon came back at 3.00 p.m. You are sitting in the Branch in an indisciplined manner and reading newspapers and neglecting the customers. In this regard, the Agent has orally instructed you, time and again and increments were also stopped, however you are delaying the work of the customers. You are not starting your work in time.

4. You are not starting your work in time and as a result, the customers are put to inconvenience. As a result, complaints have been received from the customers.

5. For the aforesaid misdeeds, you have committed serious misconducts under the provisions of Orders 23(1), 23(3), 23(16) and 23(23) of the Standing Orders. You are hereby called upon to submit your explanation within 10 days from the receipt of this Chargsheet, failing which it would be presumed that you have nothing to say and further proceedings would be conducted. Please note.

6. During the pendency of the enquiry, you are hereby suspended from service with immediate effect. Please take note hereof.

Manager,

Date: 31-7-87. The Surat District Co- operative Bank Ltd.

To: Dinyar Erach Malladaru, Bhatar Branch, Surat. S

15. Thereafter, the inquiry officer made his report dated 21st March, 1988 after taking into consideration the explanation tendered by the respondent, the evidence brought on record and the submissions made before the authority. In the report, four issues were framed "- the first one pertains to Paragraph No. 1 of the charge-sheet, the second issue pertains to Paragraph No. 2 of the charge-sheet, the third issue pertains to Paragraph No. 3 of the charge-sheet and the fourth issue pertains to Paragraph No. 4 of the charge-sheet. Answer to each of the issues was in the affirmative. The inquiry authority came to the conclusion that each of the charges stood proved against the respondent. As a consequence, on 6th May, 1988 the Staff Committee resolved to grant an opportunity of hearing to the respondent and thereafter decide the course of action including punishing the respondent, if deemed fit. Ultimately, on 17th May, 1988 the respondent was heard, his explanation was considered and the Staff Committee came to the conclusion that in light of the report of the inquiry officer

respondent was required to be discharged from service.

16. The respondent challenged the aforesaid order of discharge/termination from service by way of T. Application No. 399 of 1988. The Labour Court has made the order on 22nd September, 2000 which has already been referred hereinbefore. It is significant to note that the Labour Court has accepted and agreed with the findings recorded by the domestic inquiry officer, but deviated only in relation to the quantum of punishment. The error committed by the Labour Court appears to be based on an incorrect understanding and/or reproduction of the charges leveled in the charge-sheet against the respondent. The first charge has been read by the Labour Court as if the respondent had only disobeyed the instructions of a superior officer and had been impolite towards the superior officer. However, as noticed hereinbefore the first charge related to the refusal of the respondent to transfer the Initial Deposit Account from the Bhatar Branch to the Head Office. The explanation of the respondent was not accepted by the inquiry officer. The Labour Court has not discussed as to why the said finding is incorrect in any manner whatsoever. To the contrary it is accepted that the domestic inquiry is legal and valid and in accordance with principles of natural justice. In case the Labour Court wanted to record a different opinion it ought to have specifically discussed as to on what count it does not agree with the order of the domestic tribunal and assigned cogent reasons for expressing its disagreement.

16.1 During the course of hearing this Court had called upon the respondent to explain in what circumstances he had taken up the stand of not complying with the direction of the superior authority. Explanation tendered was that the account was of a proposed society, viz., Nutan Nivas Housing Society, and no transactions were permissible in the account of a proposed society till the point of time the society was registered. He sought to rely upon certain provisions of the Gujarat Co-operative Societies Act, 1961 with special reference to Section 9 Sub-section (4) of the said Act. Even if one accepts the explanation at its face value, it cannot absolve the respondent from the charge of insubordination. In the first instance, it was not as if the account holder was undertaking any transaction qua the account; the only act that was required to be done was transferring of the entire balance of the account holder from the branch to the Head Office for credit to the current account of the same account holder. Thus, there was no transaction in the sense one understands in relation to banking. No funds of the account holder were parted with in favour of any third party. The funds, namely, the balance in the account of the account holder were only required to be transferred from one branch to another branch (Head Office), the account holder remaining the same. Therefore, the inquiry officer was justified in coming to the conclusion that this was a case of pure and simple insubordination, indiscipline and gross negligence in discharge of duties assigned to the respondent by his superior authority. The approach of the Labour Court that this cannot be termed to be a serious misconduct is, to say the least, without understanding the nature of the charge and furthermore without appreciating the evidence on record and based on a

partial incorrect reproduction of charge No. 1.

17. Without entering into detailed discussion qua each of the other charges, suffice it to state that the Labour Court has misdirected itself in law and on facts so as to render the entire order perverse. Just as in case of Charge No. 1, in case of charge No. 3 also the Labour Court has either not understood the charge and/or glossed over the same. The charge was specifically in relation to an incorrect reporting of the actual cash available in the branch on a given day viz. 7th July, 1987. The evidence goes to show that the rules of business of the petitioner-bank required that any cash in excess of the stipulated limit had to be physically transferred to the Head Office and not retained in the premises in the branch. When the agent inquired of the respondent, the respondent gave out that there would be no occasion to cross the stipulated limit, and even if there was some excess cash the same would be marginal. However, immediately within a period of 20 minutes the respondent reported a difference of Rs. 20,000/-. It has come on record that at that point of time the peon of the bank had already been dispatched on some other assignment and hence, the agent had to request the Head Office to collect the excess cash. Not only that, when the said person turned up the respondent did not cooperate in handing over the cash and the person concerned had to wait for quite some time resulting in a cascading effect of delaying further work which was assigned to the said person and ultimately cash reached the Head Office only at 3:00 p.m. These findings are recorded by the inquiry officer. The Labour Court has failed to deal with this issue, it has not even referred to it in its order, even by way of reproduction of charge, leave alone meet with the findings of the inquiry officer.

18. It is thus apparent that either the Labour Court has not appreciated the importance of the charge concerned or has omitted the same from the zone of consideration for the reasons best known to the Labour Court. The net result is an order which could not have been made in light of the facts and evidence on record by any reasonable person. The Labour Court failed to appreciate that retention of cash beyond the stipulated limit in the branch was not a misdemeanour simpliciter. The bank, and also the respondent, were bound by the rules of business and considering the issue from the view point of security, the branch was not permitted to retain cash in physical form beyond the stipulated limit. If any cash was retained, the same would be in gross violation of the requisite rules. The respondent was a cashier and it was in the course of his duty that he gives a correct picture of the actual cash available at any given point of time. He is in charge of the cash and that is his primary duty. The Labour Court has failed to consider any of these aspects.

19. Thus, the net result is an order made by the Labour Court which cannot be sustained in light of the facts and evidence on record by treating the charges against the respondent as being ordinary instances of misdemeanour or indiscipline, the Labour Court has transgressed its jurisdiction in reducing the punishment given by the management without placing itself in the position of the

management or the authority who is required to determine the punishment considering the nature of the past defaults, the nature of the business of the establishment and the peculiar requirements of such a business. Therefore, the order made by the Labour Court cannot be permitted to stand.

20. The Industrial Court has fallen in the same error and accepted as gospel truth whatsoever has been observed and recorded by the Labour Court. The Industrial Court was required to consider, even for a prima facie examination of the validity of the order of the Labour Court, the basic facts and the controversy in issue, but it has failed to do so. It has upheld the order made by the Labour Court without dealing with various contentions raised by the petitioner before it. One of the principal contentions raised before the Industrial Court is that the order made by the Labour Court was not a speaking order and hence, it was necessary for the Industrial Court to intervene and upset the said order, or assign reasons for holding otherwise. In relation to charge No. 1, the Industrial Court proceeds on the footing that in absence of any communication or order from the District Registrar to close the account of the proposed housing society the same could not have been done and for holding so, the Industrial Court has referred to a part of the statement of one of the witnesses examined by the petitioner-Bank. The Industrial Court has further stated that the respondent did not leave his seat for attending the phone of his superior officer, because according to the Industrial Court a cashier cannot attend the phone by leaving the cabin unattended. It is an incorrect reading of the evidence and approaching the matter on the basis of presumption. It is not even the case of the respondent that he never used to leave his cabin during banking hours at any point of time. Such a conduct is humanly improbable and impossible. A person would be required to go for natural call at a particular interval of time and, therefore, the reason assigned by the Industrial Court is no reason but a hypothetical situation posed for itself and answered by itself divorced from the realities.

21. The Industrial Court has, while dealing with the charge regarding not attending to customers and putting the customers to inconvenience, accepted the say of the respondent that there were no complaints received from any customer, and whatsoever complaints had been received were from "dummy" customers; that one of the customers, one Shri Shinde, who had complained, was not examined in the domestic inquiry proceedings. Thus, according to the Industrial Court, the said charge could not be said to have been proved. The Industrial Court has failed to consider that the Labour Court had already accepted the report made by the inquiry officer without any demurrer and, therefore, there was no occasion for the Industrial Court to record any different finding on this account. However, apart from that, the Industrial Court has failed to appreciate that the business of a bank is fundamentally based on the service rendered to its customers, its a service based on trust, banking sector by itself is a service oriented sector. Any employee of a bank cannot be permitted to be either rude or impolite to the customers of the bank. Any such act of any employee would not only be an act of indiscipline but would amount to gross

negligence in carrying out the duties assigned to the person viz. not attending to the customer or inconveniencing the customer by acts of omission or commission. For a bank, any such act by its employee would always constitute gross misconduct and, considering the settled legal position once the management has decided the quantum of punishment, it would not be open to the Labour Court or the Industrial Court to intervene otherwise in accordance with the principles enunciated hereinbefore. Admittedly, in the present case, none of these principles can be invoked.

22. During course of hearing this Court called upon the respondent to explain the meaning of dummy" customers to appreciate the explanation. The answer was: those who come to bank for operating safe deposit lockers, etc. The etc." could not be elaborated by the respondent. So far as operation of safe deposit lockers is concerned it is very much a part of ordinary banking business. As held by the Supreme Court in view of Section 6(1)(a) of the Banking Regulation Act, 1949 provision of safe deposit vaults was part of ordinary business of a bank. [Mehsana District Central Co-operative Bank Ltd. Vs. Income Tax Officer, Thus the Industrial Court has misdirected itself in law.

23. Though the respondent has alleged victimization, no evidence in this regard has been led. Similarly, the allegations of mala fide have remained mere allegations in absence of any evidence in support of such allegations. Even if independently examined, a bank is run by an hierarchy of officers who are assigned various different duties and even if one accepts that a particular agent or a superior officer of a given branch, where the respondent is posted, has some malice qua the respondent, the same cannot be ascribed to the inquiry officer, to the staff committee and other senior officials in the management who have no direct dealings or no personal contact qua the delinquent. Therefore, on this count also, the impugned orders made by the Labour Court and the Industrial Court cannot be sustained.

24. One more reason which has weighed with both the Labour Court and the Industrial Court is that the bank has not suffered any financial loss on account of the misconduct of the respondent. It is stated that there is no misappropriation of funds of the bank nor is there any financial loss caused to the bank by the respondent and hence, acts for which he has been charged cannot be termed to be a grave misconduct. Both the subordinate courts have failed to appreciate that once the misconduct is proved, there is no disagreement or modification of the report of the domestic inquiry the jurisdiction of the Labour Court or the Industrial Court is limited in scope and, unless and until it can be shown that any one of the relevant factors exists, on the basis of which the quantum of punishment can be interfered with, the Labour Court or the Industrial Court cannot modify the quantum of punishment merely because of sympathy (misplaced) qua the delinquent.

25. The Industrial Court has, while upholding the order of the Labour Court, stated that withholding of 50% back wages cannot be termed to be a

punishment of lesser degree and the order of the Labour Court cannot be termed to be either illegal or invalid, without or beyond the jurisdiction, and merely because the Labour Court has not given sufficient reasons, the order of the Labour Court cannot be interfered with. The entire approach of the Industrial Court is contrary to the settled legal position which has already been discussed hereinbefore. Not only this, there are no factors which would permit the Labour Court to modify the punishment, and in absence of any reasons the order would stand vitiated.

26. Last but not the least, the respondent has alleged unfair labour practice being adopted against him by the petitioner-bank, but nothing has been shown as to how and in what manner the petitioner-bank has adopted unfair labour practice. Though various submissions have been made by the respondent in the written submissions qua the conduct of the domestic inquiry, it is not necessary to enter into discussion of the same for the simple reason that neither the Labour Court nor the Industrial Court have even attempted to record any different finding qua the report of the inquiry officer, and the respondent has not challenged the same, only the petitioner-bank has come against the order of the Industrial Court confirming the order of the Labour Court.

27. The Labour Court has all along proceeded on the footing that the punishment of dismissal from service is shockingly disproportionate. In the first instance, there is no order of dismissal; the order is of discharge/ termination from service. The Labour Court has thus based the entire order on an erroneous premise. The Industrial Court has confirmed the same without noticing the distinction. Hence, the order of the Labour Court is one which cannot be supported by the facts and evidence on record by a reasonable person in the circumstances; is vitiated in absence of reasons; and none of the relevant factors exist for interfering with the punishment meted out by the management. The Industrial Court having confirmed the order of the Labour Court after accepting that there were no reasons assigned by the Labour Court, the order of the Industrial Court cannot be sustained.

28. In the result, the impugned judgment and order dated 18th February, 2003 made by the Industrial Court in Appeal bearing (I.C.) No. 30 of 2000 and the award dated 22nd September, 2000 made by the Labour Court in T. Application No. 399 of 1988 are hereby quashed and set aside.

29. Rule made absolute. The petition is, accordingly, allowed. There shall be no order as to costs.