
(2005) 04 GAU CK 0016
In the Gauhati High Court
Case No : W.A. No. 345 of 2004

United Bank of India

APPELLANT

Vs

Sidhartha Chakraborty

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(2)

Citation : (2005) 3 GLT 432 : (2006) 1 LLJ 476

Hon'ble Judges : Ranjan Gogoi, J;D. Biswas, J

Bench : Division Bench

Advocate : B.C. Das and S. Dutta, for the Appellant; R.K. Paul and A. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—The respondent Shri Sidhartha Chakraborty was working as a Cash Clerk in the commercial wing of the appellant Bank at Ulubari, Guwahati. A disciplinary proceeding was initiated against him for commission of irregularities and accordingly, charge sheet was served on him on different counts relating to fictitious debit entries in some savings bank accounts resulting in misappropriation. On conclusion of the departmental proceedings, accepting the findings of the enquiry the respondent was dismissed from service by an order dated December 20, 1985. It was indicated in the dismissal order that in view of the pendency of an industrial dispute before the Assistant Labour Commissioner, Central Kolkata, an application u/s 33(2)(b) of the Industrial Disputes Act, 1947 was being filed for approval of the action taken by the appellant Bank. The respondent raised an industrial dispute before the Regional Labour Commissioner (Central), Guwahati for his reinstatement with full back wages challenging the legality and validity of the order of dismissal. Eventually, on failure of the reconciliation proceedings, the Government of India in the Ministry of Labour in exercise of the powers conferred u/s 10 of the Industrial Disputes Act referred the matter to the Industrial Tribunal at Guwahati. The reference as on the

question of legality and validity of the order of dismissal pending proceedings in the Labour Court for non-compliance of the provisions of Section 33(2)(b) of the Industrial Disputes Act. The learned Tribunal, on conclusion of the proceedings, held that the enquiry was in full compliance of the prescribed procedures and the principles of natural justice and, therefore, the imposition of the punishment of dismissal in view of the series of misappropriation and irregularities is justified.

2. Aggrieved, the respondent filed W.P.(C) No. 635 of 2001 controverting the award passed by the Presiding Officer, Industrial Tribunal, Guwahati in Reference Case No. 12(C) of 1997 passed on January 20, 2000.

3. It would appear that the questions raised by the respondent-petitioner before the learned single Judge was whether the appellant Bank had infact filed any application u/s 33(2)(b) of the Industrial Disputes Act for approval of the action taken by them in dismissing the respondent. The appellant Bank, alternately, contended that the provisions of Section 33(2)(b) of the Industrial Disputes Act was not mandatory as held in Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, which was the law at the time when the impugned action was taken by the appellant Bank and, therefore, the subsequent decision in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, overruling the aforesaid decision in Punjab Beverages (supra) cannot have any application to unsettle the impugned action on the principles of Doctrine of Prospective Over-Ruling. It was further contended that the respondent employee having admitted the financial irregularities in a large scale deserved other punishment than dismissal.

4. The learned single Judge after hearing the parties allowed the writ petition holding inter alia that the order of dismissal was vitiated for omission on the part of the appellant Bank to file application u/s 33(2)(b) of the Industrial Disputes Act. The learned single Judge recording a categorical finding that the appellant Bank did not file any application u/s 33(2)(b) of the Industrial Disputes Act and in view of the decision in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra), which provides that the provisions in the aforesaid Section is mandatory, the order of dismissal of the respondents is inoperative.

5. We have heard Shri B.C. Das, learned counsel for the appellant Bank as well as Shri R.K. Paul, learned counsel for the respondent-employee.

6. Shri Das argued that the decision in Punjab Beverages (supra) which provided that the provisions of Section 33(2)(b) is directory was governing the field during the period when the respondent was proceeded against departmentally and imposed with the penalty of dismissal. Therefore, the Bank authority acted in tune with the decision of the Hon''ble Supreme Court as in force at the relevant time. Shri Das further argued that the judgment in Punjab Beverages (supra), though overruled subsequently in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra), it would still be applicable to an action taken by the appellant Bank as the action is in conformity with the law as interpreted by the Apex Court at the

relevant time. Shri Das wanted to make out a case by arguing that the decision in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra) would operate prospectively. Shri Paul, learned counsel for the respondent contended that the Apex Court in the judgment in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra) did not spell out as to whether the decision rendered therein is to operate prospectively. In the absence of such an observation, the interpretation of the provisions of Section 33(2)(b) holding the provisions therein as mandatory would be applicable in all pending proceedings despite the fact that the action under challenge was taken before the judgment in Jaipur Zila Sahakari Bhoomi Vika Bank Ltd. (supra) was rendered.

7. Situated in between the above two rival contentions, we may straightway refer to the decision of the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra). The Apex Court was seized with the question as to whether in the absence of approval u/s 33(2)(b) of the Industrial Disputes Act, 1947, an order of dismissal of a workman becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and, whether failure to make an application u/s 33(2)(b) of the Act would render the order of dismissal inoperative. The observation relevant for the issue at hand is quoted below Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others,

13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment u/s 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000 or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed u/s 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield

against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2) (b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employee without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

8. The decision quoted above was rendered in consideration of the fact that the provisions of Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by an employer during pendency of an industrial dispute. Omission on the part of the employer to make an application u/s 33(2)(b) seeking approval is a clear case of contravention of the provision to Section 33(2)(b). According to the Apex Court, an employer who does not make an application u/s 33(2)(b) or withdraws the one made, cannot be awarded by relieving him of the statutory obligation. Thus, the earlier decision in Punjab Beverages (supra) stood overruled. The Apex Court nowhere in the judgment recorded any observation that the Doctrine of Prospective Over Ruling would apply in the instant case.

9. The judgment under appeal sounds no note of discord with the law as interpreted by the Hon"ble Supreme Court. Mr. Das, learned counsel fairly admitted that no application u/s 33(2)(b) was filed by the appellant Bank. This being the position, the impugned judgment warrants no interference.

10. In the result, the appeal is dismissed.