From the Desk of Editor

PRINCIPLES OF NATURAL JUSTICE IN DOMESTIC INQUIRIES ENSURING FAIRNESS AND EQUITY

Nature operates on certain inherent principles of balance, order, and fairness. Ecosystems maintain equilibrium through checks and balances, ensuring that no single element dominates or suffers disproportionately. Similarly, the principles of natural justice seek to establish a fair and balanced framework within legal and administrative proceedings. While the principles of natural justice are human constructs, they aim to emulate the principles observed in nature. They provide a framework for ensuring fairness, equity, and balance within legal and administrative proceedings, much like nature maintains balance in its operations. By incorporating these principles, legal systems strive to achieve justice that reflects the natural concept of balance and fairness.

In any society governed by the rule of law, the principles of natural justice hold significant importance. Domestic inquiries are commonly conducted by organizations to investigate allegations of misconduct, violations of policies, or disciplinary matters involving their employees or members. The principles of natural justice, also known as the principles of procedural fairness, play a crucial role in domestic inquiries to maintain the integrity of the process and safeguard the rights of the individuals involved. These principles are not codified in a specific statute but have evolved through common law and are recognized as a fundamental aspect of due process.

There are two primary principles of natural justice that apply to domestic inquiries: the audialterampartem rule and the nemoiudex in causasua rule.

Audi Alteram Partem (Hear the Other Side)

The ***audi alteram partem*** principle, meaning "***hear the other side,"*** emphasizes the right of every person to be heard and present their case before a decision is made against them. It implies that both parties involved in a dispute or inquiry should have an opportunity to present their version of events, submit evidence, call witnesses, and effectively respond to the allegations made against them.

In the context of domestic inquiries, this principle requires that individuals facing disciplinary actions or investigations should be given notice of the charges against them, the opportunity to review the evidence, and a fair chance to provide their defense.

Nemo Judex in Causa Sua (No One Should Be a Judge in Their Own Cause)

The ***nemo judex in causa sua*** principle, meaning ***"no one should be a judge in their own cause,"*** ensures the impartiality and independence of the decision-maker. It prohibits any person or entity involved in the inquiry from having a personal or pecuniary interest in the outcome. This principle prevents bias or any perception of bias that may undermine the integrity of the proceedings.

In domestic inquiries, it is essential that the decision-maker or the panel responsible for adjudicating the matter is impartial, unbiased, and free from any conflicts of interest. This may involve appointing an independent third party or ensuring that the decision-makers are not directly involved in the events leading to the inquiry. The decision-makers should approach the inquiry

with an open mind, consider the evidence presented, and arrive at a fair and just decision.

Speaking order

Speaking order, also known as reasoned decision, is another essential aspect of the principles of natural justice. It refers to the requirement that the decision-maker provides a clear and detailed explanation for their decision, including the findings, reasons, and the basis for their conclusion. A speaking order ensures transparency, accountability, and allows the affected party to understand the rationale behind the decision and assess its fairness.

The inclusion of a speaking order in domestic inquiries is crucial for several reasons:

✴ **Fairness and Transparency:** A speaking order promotes fairness by providing the affected party with an understanding of why a particular decision was reached. It ensures transparency in the decision-making process, as it helps to identify any errors, biases, or arbitrary considerations that may have influenced the outcome.

✴ **Effective Review and Appeal:** A well-reasoned and detailed speaking order enables the affected party to evaluate the decision's legality and merits. It forms the basis for an effective review or appeal of the decision. Without a speaking order, it would be challenging for the affected party to pinpoint specific issues or grounds for challenging the decision.

✴ **Accountability of Decision-Makers:** A speaking order holds decision-makers accountable for their actions and decisions. It provides an opportunity for higher authorities, appellate bodies, or courts to assess the reasoning behind the decision and determine if it aligns with the principles of natural justice. If the

speaking order lacks proper reasoning or is found to be flawed, it can be challenged and set aside.

✴ **Preventing Arbitrary Decisions:** Requiring a speaking order discourages decision-makers from making arbitrary or whimsical decisions. When decision-makers are required to articulate their reasons, they are more likely to consider the relevant evidence, apply the law correctly, and make well-informed decisions.

Additional Aspects of Natural Justice

While the principles of audi alteram partem and nemo judex in the Causa sua are the core elements of natural justice in domestic inquiries, other aspects are also relevant to ensure a fair and equitable process. These include:

i) Notice: The individuals involved in the inquiry should be given adequate notice of the charges, the nature of the inquiry, and the potential consequences they may face.

ii) Right to Present Evidence: Every individual should have the opportunity to present relevant evidence and call witnesses on their behalf.

iii) Right to Cross-Examination: The right to cross-examine witnesses presented by the opposing party is an essential element of natural justice. This enables individuals to challenge the credibility and reliability of the evidence against them.

iv) Impartial Decision-Maker: Apart from the nemo judex in Causa sua principle, the decision-maker should also be competent and act in good faith throughout the inquiry process.

v) Written Decision: The decision-maker should provide a

reasoned, written decision explaining the findings, reasons for the decision, and any applicable penalties or consequences.

Importance of Upholding Natural Justice in Domestic Inquiries

Upholding the principles of natural justice in domestic inquiries is crucial for maintaining a fair, transparent, and accountable system. It ensures that individuals are not arbitrarily subjected to adverse consequences without being given an opportunity to present their case. By adhering to natural justice, organizations and entities can prevent wrongful outcomes, protect individual rights, and enhance public trust in their processes.

Violation of Principles of Natural Justice in Domestic Inquiries and Remedies Available

The principles of natural justice, which encompass procedural fairness and protect individual rights, play a vital role in domestic inquiries conducted in India. These inquiries are often conducted by organizations, corporations, or government bodies to investigate allegations of misconduct, policy violations, or disciplinary matters involving their employees or members. However, there are instances where the principles of natural justice may be violated during these inquiries, undermining the integrity of the process. In such cases, Indian law provides several remedies to address these violations and uphold the rights of the individuals involved. Let's explore some common violations and the available remedies:

(i) Lack of Notice: The principle of audi alteram partem requires individuals to be given adequate notice of the charges and the opportunity to respond. If an inquiry proceeds without providing proper notice, it violates this principle. The affected individual can challenge the inquiry's proceedings based on this violation.

Remedy: The affected individual can raise an objection to the lack of notice at the ***earliest opportunity*** during the inquiry. If the violation persists, they may approach the appropriate judicial forum seeking a stay on the proceedings until proper notice is provided.

(ii) Denial of Opportunity to Present Defense: Every individual involved in a domestic inquiry has the right to present their case, produce evidence, and call witnesses. If an individual is denied this opportunity, it constitutes a violation of the principle of audi alteram partem.

Remedy: The affected individual can raise objections during the inquiry, stating the denial of their right to present their defense. If the violation continues, they can challenge the inquiry's proceedings in a court of law, seeking appropriate remedies such as setting aside the inquiry's findings or a fresh inquiry that respects their right to present a defense.

(iii) Biased Decision-Maker: The principle of nemo judex in causa sua prohibits any person or entity involved in the inquiry from having a personal or pecuniary interest in the outcome. If the decision-maker displays bias or has a conflict of interest, it violates this principle.

Remedy: The affected individual can challenge the decision-makers bias or conflict of interest by raising objections during the inquiry. They can request the decision-maker to recuse themselves from the proceedings. If the objection is not addressed or the bias persists, the affected individual can approach a higher authority or the judiciary to seek a fair and impartial decision-maker for the inquiry.

(iv) Failure to Provide Reasons for Decision: The decision-maker in a domestic inquiry is obligated to provide a reasoned decision, explaining the findings, reasons for the decision, and any

applicable penalties or consequences. If the decision is arbitrary or lacks proper reasoning, it violates the principle of natural justice.

Remedy: The affected individual can request the decision-maker to provide detailed reasons for their decision. If the decision lacks proper reasoning or appears to be arbitrary, the individual can challenge it by filing an appeal or seeking judicial review, requesting the decision to be set aside or revised.

(v) Delay in Conducting the Inquiry: Inordinate delays in conducting domestic inquiries can prejudice the rights of individuals involved. If there are unjustifiable delays that impact the fairness of the proceedings, it violates the principles of natural justice.

Remedy: The affected individual can raise objections to the delay during the inquiry. If the delays persist or are unreasonable, they can approach the appropriate judicial forum seeking directions to expedite the proceedings or stay the inquiry until the delays are addressed.

In conclusion, while domestic inquiries serve as a means to investigate misconduct or violations, it is crucial to uphold the principles of natural justice throughout the process. Individuals who find their rights violated during these inquiries can avail themselves of various remedies under Indian law to challenge the violations and seek appropriate redress. It is important to note that the remedies available in case of violation of principles of natural justice during domestic inquiries may vary depending on the nature of the inquiry, the governing laws, and the forum where the violation is challenged. It is advisable for individuals to contact their association representatives to understand the specific remedies available to them in their particular circumstances.■

Article

NECESSITY OF A PANEL FOR INDEPENDENT ENQUIRY OFFICERS

Under the present system, an enquiry officer without powers does not inspire the confidence of the delinquent employees

H.L.KUMAR, Advocate

Everyone is talking of changes in labour laws and even the recently enacted Industrial Relations Code, 2020 (not yet implemented) has not touched the vital issue holding of enquires when an employee is charge-sheeted and his explanation has not been found satisfactory. In India there are more than 175 labour legislations but none of these deals with the procedure of holding enquiries. That apart, the main drawback in labour administration pertains to the appointment of enquiry officers. Invariably in every disciplinary proceeding the enquiry officer as appointed by the employer does not inspire the confidence of the delinquent employee. There is thus great need to change procedure of the domestic enquiries.

Here it must be mentioned that in the development of legal system the decisions of the Courts play a very important role particularly the ratio decidendi verdicts. Sometimes obiter dicta verdicts also help to arrive at a plausible conclusion. That is why we see that in spite of the absence of the statutory Provisions of the domestic enquiries have now become almost obligatory for every employer to provide opportunity of defense to a delinquent employee.

There is a Maxiin Audi Alteram Partem stating that nobody should be condemned unheard. In view of this the need of the domestic enquiries is fully justified because they are held in accordance with the principles of natural justice when there is no codified law. In domestic enquiries opportunity is given to the person against whom certain actions are proposed to be taken to defend himself and tell the Enquiry Officer records the evidence of the parties and gives its findings to the effect whether the charges as levied have been proved or not.

The entire law on the subject has been reviewed and reiterated in Chamoli District Co-operative Bank Ltd. v. Raghunath Singh Rana and others, the Supreme Court has culled out certain principles as under:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer during the enquiry steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report before proceeding further it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views if any."

The principal of law emanates from the above judgments is that initial burden is on the department to prove the charges. In case where inquiry is initiated with a view to inflict major penalty department must prove charges by adducing evidence by holding

oral inquiry.

It is trite law that the departmental proceedings are quasi judicial proceedings. The Inquiry Officer functions as quasi-judicial officer. He is not merely a representative of the department. He has to act as an independent and impartial officer to find out the truth. The major punishment awarded to a employee visit serious civil consequences and as such the departmental proceedings ought to be in conformity with the principles of natural justice. Even if an employee prefers not to participate in enquiry the department has to establish the charges against employee by adducing oral as well as documentary evidence.

As of today more than 90 per cent cases pending for adjudication pertain to dismissal and discharge of workmen. Gone are the days when employer could dispense with the services of an employee at his whims and fancies. With the disappearance of the principles of lassie faire which were governing the relationship between an employer and employee an employer cannot dismiss or discharge an employee howsoever undisciplined undesirable or non/under performer he may be. The current labour legislation judicial pronouncements which have for their objective the amelioration of the lot and the betterment of the service conditions of the working class have to a great extent restricted rights of an employer and secured to the corresponding extent the job security of a workman.

When we talk of disciplinary proceedings in private employment a domestic enquiry is that of mistrust which arises essentially because the charge-sheet is given by the employer and the enquiry is also held by an officer or an outsider appointed by the employer. The employer as such represents the both the prosecutor and the judge. A suspicion of bias is inevitable in such a situation. This is the main reason that the delinquent employees do not have faith in the Enquiry Officers. They participate reluctantly and take every possible step to frustrate the enquires.

They raise number of objections including that of the validity of the appointment of Enquiry Officer. They also demand to be represented either by a lawyer or the union leaders. They ask for number of documents. Whether relevant or not. Also the delinquent employees or their representatives do not restrict the cross-examination of the witnesse's and the Enquiry Officer has to take decision under the given circumstances.

Since the workmen have a preconceived feeling that the management has already taken a decision to get rid of them and the enquiry is only a post-mortem to comply with the legal formalities, the Enquiry Officer howsoever impartial he may be does not inspire the confidence of the delinquent workmen. This feeling frustrates the very essence of natural justice. Therefore, it is necessary that the law should provide a 'Panel of Enquiry Officers, who may be amongst retired Judges and labour officers. They should be empowered with semi-judicial powers while holding of enquiries. Such powers are vested with the internal Committee or the Local Committee for the purpose of holding an enquiry shall have same powers as are vested in a Civil Court under the Code of Civil Procedure 1908 when trying a suit in respect of the following matters namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

As a result of such enquiries. The weightage will be given to the findings of such Enquiry Officer and the number of industrial disputes will be considerably reduced since the parties will know their fate on the conclusion of enquiries. When such a panel constituted the enquiries will generate a sense of trust and confidence among the workers and employers alike. Though such an officer will be paid his professional charges by the employer but it will not be presumed that he will support the employer.■

[2023 (177) FLR 185]
(SUPREME COURT)
KRISHNA MURARI and BELA M. TRIVEDI, JJ.
Civil Appeal No. 175 of 2023
January 9, 2023
Between
STATE BANK OF INDIA and others
KAMAL KISHORE PRASAD

Dismissal-Constitution of India, 1950-Article 136-Learned Single Judge allowed the writ petition of respondent-employee- Appeal filed by the Bank was dismissed-Hence instant appeal by Bank-Held Division Bench of High court had earlier stayed the operation of the order of learned Single Judge-During the pendency of appeal the respondent was retired-Order of Division Bench which was in favour of employee had been set aside by the Supreme Court-It could not be said that the respondent was continued in service till he attained the age of superannuation-Order of dismissal passed by Appointing Authority after giving opportunity was in consonance with the direction of Supreme Court-It could not be said to be arbitrary, illegal or in violation of Rule 19 (3) of Rules-Impugned order of High Court setting aside the order of dismissal and the order of Division Bench confirming the order of learned Single Judge set aside-Appeal allowed. [Paras 11 to 14]

JUDGMENT

BELA M. TRIVEDI, J.- Leave granted.

2. The present appeal is directed against the judgment and order dated 01.02.2018 passed by the High Court of Judicature at Patna in LPA No. 2035 of 2016, whereby the High Court has dismissed the appeal filed by the Appellant-Bank and confirmed the order passed by the Single Bench.

3. The short facts giving rise to the present petition are that the respondent while posted as a Branch Manager at Marufganj Branch and at various other branches, was found to have committed various lapses, in respect of which he was suspended on 14.06.1993 in terms of Rule 50A (i)(a) of SBIOSR, 1992. On the departmental

proceedings having been conducted against him, the Inquiry Authority had submitted its report on 09.03.1998, whereby some of the allegations were found to be proved and some were found to be partly proved. The Disciplinary Authority agreed with some of the findings recorded by the Inquiry Authority and called upon the respondent to make his submissions on the same. However thereafter the matter was sent to the Appointing Authority, which imposed the penalty of "Dismissal from Service" as per the order dated 11.08.1999.

4. The respondent being aggrieved by the said order had filed a Writ Petition being No. 2739 of 2000 before the High Court which came to be allowed by the Single Bench vide order dated 26.03.2003. The Appellant-Bank aggrieved by the said order had filed an LPA being No. 378 of 2003. On 09.05.2003, the Division Bench stayed the implementation of the order dated 26.03.2003 passed by the Single Bench, however finally dismissed the said LPA vide order dated 22.04.2010. In the meantime, the respondent attained the age of superannuation on 30.11.2009. The Appellant-Bank having filed SLP (C) No. 16541 of 2010 challenging the order dated 22.04.2010 passed by the Division Bench, the same came to be allowed by this Court on 25.11.2013. While allowing the SLP, this Court observed as under:

> "10. We have heard learned counsel for the parties to the lis.
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> 11. The Writ Court while deciding the writ petition filed by the respondent against the orders passed by the Appointing Authority had followed the dicta of this Court wherein it is said that the person who hears the matter should necessarily pass an order. The Division Bench of the High Court in its judgment has referred to the subsequent decisions of this Court. In our opinion, we need not have to refer to those decisions. It is now a well settled principle that the person who hears the matter requires to pass an order.
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> 12. Since, that is the view of the Learned Single Judge, we are of the opinion that such a view cannot be taken exception to by us. However, the Division Bench while rejecting the Letters Patent Appeal filed by the appellant-bank has made certain observations which in our opinion, would not arise in the matter of this nature. Therefore, we cannot sustain the judgment and order passed by the Division Bench of the High Court.
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> 13. In the result, we allow this appeal and set aside the judgment and order passed by the Division Bench of the High Court in Letters Patent Appeal No.378 of 2003. Since we are told that the delinquent officer has already retired from service on attaining the age of superannuation, we now direct the Appointing Authority to take appropriate decision as expeditious as possible, at any date within two months from the receipt of copy of this order.
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> 14. All the contentions of all the parties are kept open. Ordered accordingly."

5. In view of the above order passed by this Court, the Appointing Authority issued a show-cause notice to the respondent on 06.02.2014, to which the respondent submitted his response on 10.02.2014. The Appointing Authority after granting personal hearing to the respondent on 14.02.2014, passed an order on 17.02.2014 imposing upon the respondent the penalty of ***"Dismissal from Service"*** in terms of Rule 67(J) of SBISOR w.e.f. 11.08.1999 and treating his period of suspension as not on duty.

6. Being aggrieved by the said order passed by the Appointing Authority, the respondent filed Departmental appeal before the Appellate Authority on 24.02.2014, which came to be dismissed on 09.08.2014. The respondent therefore again approached the High Court by way of filing CWJC No. 10192 of 2014. The Single Bench of the High Court vide the order dated 22.08.2016 allowed the said petition, and quashed and set aside the order of dismissal passed by the Appellant-Bank and directed the Appellant-Bank to pay all the consequential benefits i.e., arrears of salary and retiral benefits within 3 months thereof. The aggrieved appellant-bank filed LPA being no. 2035 of 2016 on 17.10.2016, which came to be dismissed by the Division Bench vide the impugned order dated 01.02.2018.

7. The learned ASG Mr. Balbir Singh for the Appellant-Bank

vehemently submitted that the High Court had committed gross error in confirming the order passed by the Single Bench, and in misinterpreting the Rules 19(1) and 19(3) of the SBIOSR, 1992.According to him, this Court in the first round of litigation had allowed the appeal filed by the Appellant-Bank and set aside the order passed by the Division Bench, and while observing that the person who hears the matter requires to pass an order, had directed the Appointing Authority to take appropriate decision within 2 months, keeping all the contentions of the parties open. The appointing authority, therefore had issued a show-cause notice to the respondent and after giving him an opportunity of hearing had passed the order of dismissal, which was wrongly set aside by the Single Bench and by the Division Bench.

8. However, the learned counsel Mr. Kripa Shankar Prasad appearing for the respondent submitted that an affirmative action was expected to be taken by the Appellant-Bank in view of the order passed by the Supreme Court on 25.11.2013, as the respondent had already attained the age of superannuation pending the proceeding before the High Court. He further submitted in the said order the Supreme Court had set aside the order of Division Bench, however had agreed with the view expressed by the Single Bench that as per the settled legal principle, the person who hears the matter is required to pass an order. According to him, the Supreme Court had granted the liberty only to the extent of directing the Appointing Authority to take appropriate action in accordance with law as the respondent had attained the age of superannuation. Under the circumstances, the Appointing Authority was required to take steps either to extend the service of the respondent in terms of Rule 19(1), or to continue the disciplinary proceedings, even after the superannuation of the respondent under Rule 19(3) of the Rules, however the Appellant- Bank did not take recourse to any of the said rules. He further submitted that the discretion to continue with the disciplinary proceedings had to be exercised as an affirmative action by taking a conscious decision, which the Appointing Authority of the Appellant-Bank had failed to take, and on the contrary passed the order of dismissal with retrospective effect which was not legally permissible.

9. Since much reliance has been placed by the learned counsel appearing for the respondent on Rules 19(1) and 19(3) of the SBIOSR Rules, the same are reproduced for the sake of convenience:

"19.(1) An officer shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first.

Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years' service or thirty years' pensionable service as the case may be, should such extension be deemed desirable in the interest of the Bank, so however, that the service rendered by the concerned officer beyond 58 years of age except to the extent of the period of leave due at that time will not count for purpose of pension.

Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after July, 19, 1969 and attained the age of 58 years shall not be granted any further extension in service.

Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service as the case may be, by giving him three months' notice in writing or pay in lieu thereof.

Provided further that an officer who has completed 20 years' service or 20 years' pensionable service, as the case may be, may be permitted by the competent authority to retire from the Bank's service, subject to his giving three months' notice or pay in lieu thereof unless this requirement is wholly or partly waived by it.

19.(2) ....

19.(3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank's service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so

however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

Explanation: An officer will retire on the last day. of the month in which he completes the stipulated service or age of retirement."

10. On the bare perusal of the said Rules it clearly transpires that as per Rule 19(1) of the Rules, an officer could retire from the service of the bank on attaining the age of 58 years or upon the completion of 30 years' service or 30 years' of pensionable service if he is a member of the Pension Fund whichever occurs first, subject to the provisos mentioned therein. As per the Rule 19(3), in case the disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank's service by operation of, or by virtue of any of the rules, the disciplinary proceedings may at the discretion of Managing Director be continued and concluded, as if the officer had continued to be in service. However, the officer in that case shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

11. So far as the facts of the present case are concerned, the disciplinary proceedings against the respondent were already initiated and had stood concluded, culminating into dismissal from service as per the order dated 11.08.1999 passed by the Appointing Authority. The said order was challenged by the respondent by filing the Writ Petition, which came to be allowed by the Single Bench on 26.03.2009 whereby the order of dismissal was set aside, nonetheless the Appellant-Bank having preferred the LPA No. 378 of 2003, the Division Bench had stayed the operation and implementation of the said order passed by the Single Bench on 09.05.2003. The said LPA came to be dismissed on 22.04.2010, in the meantime on 30.11.2009, the respondent attained the age of superannuation i.e., during the time, when the operation of the order of Single Bench was stayed. Thus, the order of Single Bench setting aside the order of dismissal passed by the Appointing Authority having been stayed by the Division Bench, the respondent could not be deemed to have continued in service, and also when he had attained the age of superannuation on 30.11.2009. Thereafter, the order of Division Bench dated 22.04.2010 passed in the LPA 378 of 2003 having been set aside by this Court while allowing the appeal filed by the Appellant-Bank vide the order dated 25.11.2013, again it

could not be said that the respondent was continued in service, till he attained the age of superannuation.

12. The reliance placed by the learned counsel for the respondent on Rule 19(3) of the Rules is also thoroughly misplaced in as much as Rule 19(3) contemplates a situation, when the disciplinary proceedings against a bank officer, have already been initiated, and are pending when the officer ceases to be in the Bank's service, and in that case the Managing Director in his discretion may continue and conclude the disciplinary proceedings against the officer as if the officer continues to be in service. However, in the instant case, there was no question of Managing Director exercising such discretion under Rule 19(3) as the disciplinary proceedings initiated against the respondent had already culminated into his dismissal as per the order dated 11.08.1999 passed by the Appointing Authority. Though the said order of dismissal was set aside by the Single Bench, the order of Single Bench had remained stayed pending the LPA filed by the Bank; and though the LPA was dismissed by the Division Bench, the said order in LPA was set aside by this Court, observing that the person who hears the matter has to decide it.

13. It was only pursuant to the direction given by this Court vide the order dated 25.11.2013, the Appointing Authority was expected to hear the respondent and pass appropriate order. This Court had kept all the contentions of all the parties open. Hence the Appointing Authority after issuing show-cause notice and granting opportunity of hearing to the respondent had passed the order imposing the penalty of "Dismissal from Service" w.e.f. 11.08.1999, i.e., from the date when the first order of dismissal was passed by the Appointing Authority. Since all the contentions were kept open by this Court while allowing the appeal filed by the Appellant-Bank, as such no affirmative action was expected from the Appellant-Bank, as sought to be submitted by the learned counsel for the respondent. The said order of Appointing Authority dismissing the respondent from service after granting opportunity of hearing to the respondent was in consonance with the direction given by this Court and could not be said to be arbitrary illegal or in violation of Rule 19(3) of the said Rules. The impugned order of the High Court setting aside the said order of dismissal being under misconception of facts and law deserves to be quashed and set aside.

14. In that view of the matter the impugned order passed by the Division Bench confirming the order passed by the Single Bench, is hereby accordingly set aside.

15. The appeal stands allowed.■

Appeal Allowed.

[2023 (177) FLR 457]
(CALCUTTA HIGH COURT)
RAJA BASU CHOWDHURY,J.
W.P.O. No. 1695 of 2022
March 31, 2023
Between
SONALI BANK EMPLOYEES' ASSOCIATION and another
and
UNION OF INDIA and others

Industrial Disputes Act 1947-Sections 29 and 34 (1)-Allegation of unfair labour practice-Enforcement of Bipartite settlement-Weightage was being claimed by senior employees of Bank while being appointed as Special Assistants in the clerical cadre-Bank denied as not binding upon the management-Petitioner-Union alleged the violation of section 29 of Act hence prayed for initiating proceedings against Bank while lodging complaint specially against respondent No.3-Hence present petition-Held, allegation of commission of offence by the Bank under section 34 of Act-Since the offence complained of was punishable under the Act a duty cast upon the D.L.C.to examine whether such offence was committed by the respondent No.3 and then to lodge a complaint-Lodging complaint by taking cognizance of an offence could not be said to be de hors the provisions of the said Act-Appropriate Government to apply its mind and to take a decision as regards the commission of offence under the said Act especially when the alleged commission of offence falls within the meaning of unfair labour practice-Respondent No.2 directed to take decision-Writ petition disposed of. [Paras 20 to 24]

JUDGMENT

RAJA BASU CHOWDHURY, J- The present writ application has been filed, inter alia, praying for direction upon the respondent No.2 to initiate proceedings and lodged complaint before the concerned Court of Law against Sonali Bank Management, especially and more particularly against the respondent No.3, as per the provisions of section 34(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act") for the commission of offence punishable under section 29 of the said Act.

2. It is the case of the petitioners that from time to time various bipartite settlements have been entered into between the registered trade unions and the Management of Sonali Bank. In terms of one such settlement being the 4th Bipartite Settlement dated 17th September, 1984, as per clause 6 thereof, it had been agreed that in the matter of filling up post of Special Assistants in the Clerical Cadre, suitability be determined in member banks, having the post of Special Assistants, by interview of senior employees with weightage for qualification. The aforesaid settlement had, however, been amended from time to time and at present, 11th Bipartite Settlement is in force with the aforesaid existing term and the aforesaid settlement is binding on the parties.

3. The petitioners say that the members of the petitioners' union came to learn that as per Risk Mitigation Plan of Reserve Bank of India dated 31st March, 2018, Sonali Bank was required to formulate Staff Regulation/Employee rules by 31st July, 2019. Subsequently, Sonali Bank had prepared and formulated the Sonali Bank Limited, India Operation (Officers and Staff) Service Rule, 2019 (hereinafter referred to as the said rules) and had submitted the same to the Reserve Bank of India, sometime in or about September, 2019 in compliance of the Risk Mitigation Plan of Reserve Bank of India.

4. It is in February, 2021 that the petitioners were served with a copy of the said rules. From a perusal of the said rules, it transpires that Sonali Bank, in derogation of the settlements already arrived at between the Unions and the Sonali Bank, inter alia, incorporated clauses in the said rules which mentioned that the Bipartite Settlement/s shall not binding on the management of the bank.

5. Assailing the said rules, the writ petitioners had filed a writ application before this Court. By order dated 9th April, 2021 this Hon'ble Court, while entertaining the aforesaid writ application, was, inter alia, pleased to stay the said rules.

6. Subsequently, on or about 27th January, 2022, the General Secretary of the petitioners' union by a detailed representation addressed to the Deputy Chief Labour Commissioner (Central), Ministry of Labour, Office of the Deputy Labour Commissioner (C), Kolkata, had reported the violation of the existing policy and the settlements, so as to activate the office of the Deputy Chief Labour Commissioner for taking steps in terms of section 34 of the said Act. Since, no steps have been taken by the Deputy Chief Labour Commissioner (Central), the respondent No.2 herein, the present writ application has been filed.

7. Mr. Banerjee, learned Advocate representing the petitioners by drawing attention of this Court to section 29 of the said Act, submits that the said Act, inter alia, provides for a mechanism for punishing the guilty who commits breach of the terms of settlement or award which is binding on him under the said Act. Mr. Banerjee submits that although it was a duty cast upon the respondent No.2, to take cognizance of the complaint made by the petitioners and lodge complaint either with the Metropolitan Magistrate or the Judicial Magistrate of the 1st class, no such complaint had been lodged.

8. By referring to section 34 of the said Act, Mr. Banerjee submits that the said Act provides that the aforesaid complaint can only be lodged by the appropriate Government, and as such, the petitioners had approached the respondent No. 2, who is otherwise conferred with the authority of an appropriate Government, upon being delegated with the powers of an appropriate Government, in terms of section 39 of the said Act.

9. The respondent No.2 ought to have taken cognizance of the complaints made by the petitioners and ought to have taken a prima facie view for lodging the complaint. The respondent No.2 has, however, not taken any steps in the matter. In support of his contention that it is for the appropriate Government to take steps in connection with the complaints, as regards breach of settlements or awards committed by individuals, he places reliance on a judgment

delivered by the Hon'ble Supreme Court in the case of Raj Kumar Gupta v. Lt. Governor, Delhi and others., He also placed reliance on a judgment delivered by the Hon'ble Rajasthan High Court in the case of M/s. Indian Hotel Company Ltd. Bombay and another. v. State of Rajasthan and others.,

10. Per contra, Mr. Das, learned Advocate, representing the respondent No. 3 submits that the present writ application is not maintainable. It is submitted that the aforesaid writ application suffers from non-joinder and mis-joinder of parties. He says that Sonali Bank has not been made a party. The disputes raised by the petitioners do not constitute disputes within the meaning of section 2(k) of the said Act. By referring to Page 200 of the writ application, he submits that the aforesaid 4th bipartite settlement deals with settlements, in relation to matters of filling up posts of Special Assistants in clerical grade. By referring to Page-195 of the writ application, being the complaint dated 27th January, 2022, he says that the petitioners have complained of failure to grant promotion from Special Assistant to JMG-S-I (Junior Management Grade Scale I). The aforesaid complaint made by the petitioners would, prima facie, demonstrate that the same is not on account of the failure to implement the bipartite settlement.

11. By referring to section 4 of the said Act, he submits that the conciliation officer is only competent to engage in conciliation and has no authority or jurisdiction to adjudicate rival claims between the parties. In support of his aforesaid contention, he places reliance on an unreported judgment delivered by this Hon'ble Court in the case of ABN Amro Bank N.V. v. Union of India and others in W.P. No. 1313 of 2003. By referring to section 12(2) of the said Act, it is submitted that although, the conciliation officer has the power to bring about settlement of disputes and investigate disputes, such disputes must be in relation to the industrial dispute within the meaning of section 2(k) of the said Act, though the settlement may or may not be a settlement within the meaning of the said Act.

12. Mr. Das submits that from the complaint, it would appear that the same relates to grant or non-grant of promotion. According to him, grant or non-grant of promotion does not constitute a dispute within the meaning of section 2(k) of the said Act. For a dispute to confirm to the provisions of section 2(k) of the said Act, the same

has to be in relation to, either with employment or non-employment and no other dispute can be referred to the Tribunal for adjudication. In support of his aforesaid contention, he places reliance on a judgment delivered by the Hon'ble Supreme Court of India in the case of Workmen of Nilgiri Co-op. Mkt. Society Ltd. v. State of Tamil Nadu & others.,

13. Having heard the learned advocate appearing for the respective parties, I find that the principal question for determination in the instant application is whether the petitioners have the right to call upon the respondent No.2 to lodge a complaint against the respondent No.3 on account of commission of offence punishable under section 29 of the said Act, and whether this Hon'ble Court can issue any direction upon the respondent No.2, to lodge or register any complaint either with the Metropolitan Magistrate or with the Judicial Magistrate of 1st Class, as the case may be.

14. I find that the present case has been filed by a registered Trade Union. Secretary to such Trade Union is also party to the aforesaid proceedings. I find that the petitioners' complain that despite the service conditions of the employees of Sonali Bank, at all materials times are covered by bipartite settlements, which are binding both on the Management of Sonali Bank and the employees of Sonali Bank, Sonali Bank Limited had framed the said rules. The petitioners say that the aforesaid rules framed by Sonali Bank and served on the petitioners in or about February 2021 are in conflict with the bipartite settlement.

15. Assailing the said rules the petitioners had filed a writ application before this Court. By order dated 9th April, 2021 this Hon'ble Court while entertaining the aforesaid writ application was, inter alia, pleased to stay the said rules. The parties have confirmed that the aforesaid order is valid and subsisting.

16. During pendency of the aforesaid writ application on 27th January, 2022 the petitioners having noticed breach of the settlement, had reported violation of settlement so as to activate the Office of the Deputy Chief Labour Commissioner, for taking steps in terms of section 34 of the said Act. Since the respondent No.2 did not take any steps this writ application had been filed. I find that the petitioners have claimed that the aforesaid 11th bipartite settlement is valid and

subsisting. I also find that the said rules framed by the respondent No.3 had since been stayed by the Hon'ble Court. In such view of the matter, there cannot be any dispute as to whether the aforesaid bipartite settlement is valid or not. Once, it is concluded that the bipartite settlement is valid and binding on the parties, the next question that arises for consideration is whether the settlement can be enforced. As rightly pointed out by Mr. Das appearing for the respondent No.3 that a Conciliation Officer has no power either enforce or adjudicate whether a settlement is a settlement within the meaning of the said Act. However, the contention of Mr. Das that only remedy of the petitioners in case of breach of settlement is to raise an Industrial Dispute, cannot be accepted.

17. Although Mr. Das learned advocate by placing reliance on section 2 (k) of the said Act, has attempted to claim, by referring to the letter dated 27 January, 2022 issued by the General Manager of the petitioner No.1, that non-grant of promotion to JMG-S-I (Junior Management Grade Scale I) cannot constitute a dispute within the meaning of section 2(k) of the said Act, since the JMG-S-I grade do not belong to workmen within the meaning of the said Act, I am, however, unable to accept the contention of Mr. Das as by letter dated 27th January, 2022, the petitioner No.2 had not chosen to call in question the steps taken by the respondent No.3 which are only limited to the grant of promotion to the post of JMG-S-I Grade. A perusal of the aforesaid letter would indicate that the petitioner No.2 had also questioned the promotion of other candidates by alleging breach of such bilateral settlement. By said letter the petitioner No.2 was, inter alia, pleased to further highlight that the bipartite settlement is a settlement within the meaning of the said Act, and violation of such settlement as has been done by the Management of Sonali Bank tantamount to commission of offence under section 29 of the said Act.

18. It is in the factual backdrop as aforesaid, the petitioner No.2 had called upon the respondent No.2, to lodge a complaint before the appropriate Court of Law having jurisdiction, against Sonali Bank Management as per the provisions of section 34(1) of the said Act, for commission of offence punishable under section 29 of the said Act.

19. Mr. Das has strenuously argued by placing reliance in the case

of Workmen of Nilgiri Coop. Mkt. Society Ltd., (supra) and has tried to contend that it is only the disputes in relation to employment or non- employment, which are specified in the second and third schedule of the said Act, which partakes the character of an industrial dispute, for which a reference can be made, and no other dispute can be raised

20. I find that in the case at hand the petitioners have not attempted to raise an industrial dispute but intends to invoke the machinery available under the said Act, for punishing the guilty on account of commission of offence under section 34 of the said Act. The aforesaid judgment does not in any way assist the respondent No.3. I, however, find that in fifth schedule of the said Act, various types of unfair labour practices on the part of the employer and the Trade Union of the employer has been illustrated. Under entry No. 13 of the fifth schedule, failure to implement an award, settlement or agreement also constituted an unfair labour practice. Unfair labour practice which has defined section 2(ra) of the said Act, means any of the practices specified in the fifth Schedule of the said Act. As such, non-implementation of the settlement also constitutes an unfair labour practice within the meaning of the said Act. I also find that a machinery has been provided under section 39 of the said Act, for taking cognizance of an offence punishable under the said Act. Since, failure to implement an award constitutes unfair labour practice within the meaning of the said Act, it cannot be said that the petitioners had irregularly invoked the jurisdiction of the respondent No.2, especially when, it was for the respondent No.2, to not only take cognizance of an offence committed under section 29 read with section 34 of the said Act but also to lodge appropriate complaint in that regard, before appropriate Court having jurisdiction.

21. I find that it has been provided that no Court inferior to that of the Metropolitan Magistrate or the Judicial Magistrate of 1st Class shall try any offence punishable under this Act. Since, an offence complained of is punishable under this Act, I am of the view that a duty is cast on the respondent No.2, to examine whether such offence has been committed by the respondent No.3 and thereafter to lodge a complaint before the appropriate Court, if conditions for lodging such complaints stands fulfilled. Duty to lodge a complaint by taking cognizance of an offence, thus, cannot be said to be dehors the provisions of the said Act. Although Mr. Das, by referring to an

unreported judgment delivered by this Court in the case of ABN Amro Bank N.V. v. Union of India & others. (supra), has attempted to claim that in referring a dispute under section 10 of the said Act or under section 12(5) thereof, the appropriate Government does not function in a judicial or quasi-judicial capacity but it's functions are purely administrative and no adjudication takes place at that stage, I am of the view that such observations were made by this Court, in relation to a reference under section 10 of the said Act, and not in relation to taking cognizance of an offence under section 34 of the said Act.

22. I find that the Hon'ble High Court of Rajasthan has also while discussing about the authority and jurisdiction of appropriate Government to take cognizance of an offence under section 34 of the said Act, has been, inter alia, pleased to observe as follows:

> "23. In a case under section 34(1) of the Act we should not over-sight the fact that in a case of industrial dispute the lis is between the management and the employee or management and the trade union. The appropriate government is required to interfere only to maintain industrial harmony and nothing else. The complaint to be filed before the learned Magistrate under the Act is by no means different from that of a private complaint filed by an individual under section 200 of the Code of Criminal Procedure. The involvement of the appropriate government is necessary just to see that the industrial peace and tranquillity is not disturbed either by the management or by the trade union. By enacting penal provisions, the aim of the Legislature is to ensure compliance of the provisions of the statute, i.e., that neither the employer nor the employee must adopt the unfair labour practice. If such provisions had not been enacted, there would have been very likelihood of filing frivolous complaints indiscriminately, which might ultimately affect the industrial peace. Therefore, the public policy requires that appropriate government may apply its mind and satisfy itself before it authorises a person to file complaint and the purpose of Legislature to enact section 34(1) of the Act is only to ensure non-filing of frivolous complaints and nothing more. Therefore, the authorisation under section 34 cannot be put at par to the sanction which the appropriate government is required to exercise in granting or refusing sanction where

sanction is a condition precedent to filing of a complaint. The discretion is just that of a private person who may file a complaint on pure ground of expediency and nothing else. (Vide Ram Das v. K.M. Sen (19)). The reason being that there are two separate provisions in the Code of Criminal Procedure which provide for according the sanction. Section 196 provides that no Court shall take cognizance of any offence punishable under certain Sections unless complaint is made by order of or under authority from the State Government or some officer empowered by the State Government in this behalf. The other provision, i.e., section 197, provides that when certain public servant are accused of any of offence alleged to have been committed by them while acting or purporting to act in discharge of the official duty, no Court shall take cognizance of such offence except with the previous sanction of certain authorities. Putting the professions consecutively in the Code require to draw inference that both the provisions must mean two different things and must be made applicable in two different situations. When an individual person files a complaint, he certainly exercises a certain amount of discretion and it is this discretion which is to be exercised while according or refusing authorisation under section 34(1) of the Act.

24. When the order of sanction refers to relevant material though it does not refer to the contents of the same, and the order is passed after issuing show cause notice to the petitioners and on a reply submitted by them, and even thereafter it will still be open to the party to agitate before the Court during the course of prosecution that the sanction accorded is invalid. In such a situation, the provisions of Articles 226 and 227 of the Constitution cannot come to the rescue of the petitioners. In such a case if the petition is entertained, it will not only lead to delay in the prosecution but it will, also, lead to delay in the implementation of the Settlement and the execution of the mandatory provisions of the Act. (Vide F.K. Menzlin v. B.P. Prem Kumar)

23. Having regard to the aforesaid and the provisions of the said Act, I am of the view that public policy also requires the appropriate Government to apply its mind and take a decision as regards commission of an offence under the said Act, especially when the alleged commission of offence falls within the meaning of unfair labour practice as defined under section 2(ra) of the said Act. In

view thereof, there shall be an order directing the respondent No.2 to take a decision on the basis of the communication dated 27th January, 2022 and the reminder dated 14th March, 2022, for the said respondent No.2, to take steps in the matter as it may deem fit and necessary. Needless to note that respondent No. 2 while taking steps, shall be guided by the observations made in this order.

24. With the aforesaid directions and observations, the writ application is disposed of.

25. There shall be no order as to costs.

26. Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.■

Application Disposed Of.

[2023 (177) FLR 231]

(BOMBAY HIGH COURT-AURANGABAD BENCH)

MANGESH S.PATIL and SANDEEP V . MARNE, JJ.

W.P. No. 9785 of 2017

October 14, 2022

Between

ASHOK WAMANRAO BANKAR and others

and

UNION OF INDIA and others

Constitution of India, 1950-Article 226-Claim of superannuation benefits alongwith interest-During pendency the petitioner expired hence the legal heirs brough on record-Allegation of misappropriation while working as cashier in the respondent-Bank-Punishment of removal from service awarded-Objection by means of present writ petition-Held, an employee removed from service would be entitled to superannuation benefits-Rule made absolute-Petition allowed. [Paras 8 and 9]

JUDGMENT

SANDEEP V. MARNE, J.- Heard. Rule. It is made returnable forthwith. Mr. Ajay G. Talhar, learned advocate waives service for respondent No.1 and Mr. Prashant K. Nikam, learned advocate waives service for respondent Nos.2 to 6. At their joint request the matter is heard finally at the admission stage.

2. By the present petition, the petitioner seeks implementation of the penalty order dated 25.11.2011 by paying him all superannuation benefits in the form of Pension, Provident Fund, Gratuity, Commutation of Pension and leave encashment etc., along with interest. During pendency of the present petition, the petitioner has expired and his legal heirs have been brought on record.

3. In the disciplinary enquiry held against the petitioner on the charge of misappropriation of amounts while functioning as Cashier in the respondent - Bank, following punishment was imposed on him:

> "In view of the above, the undersigned as the Disciplinary Authority, confirms the proposed punishment as indicated in the show cause notice No. ZON/Vig/112 dated 4th November, 2011 and impose upon Sri Ashok W. Bankar, Clerk-cum-Cashier (now Single Window Operator), Jamb (Parbhani) branch (Under Suspension) the punishment as per clause 6(b) of Memorandum of Settlement dated 10th April 2002 that he "be removed from service with superannuation benefits i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment. Further, the suspension period will not be treated as on duty and no other allowances except the subsistence allowance already paid will be released to Sri Bankar."

4. It is the petitioner's case that the punishment has been imposed under Clause 6 (b) of the Memorandum of Settlement dated 10.04.2002, which reads thus:

> '6. An employee found guilty of gross misconduct may:
>
> a) .....

> b) be removed from service with superannuation benefits i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
>
> (c) to (i)"

5. Mr. Mane, the learned Counsel for the petitioner would submit that the penalty order as well as clause 6 (d) of the Memorandum of Settlement clearly provide that upon imposition of the penalty of removal from service, the employee shall be entitled to all superannuation benefits. He would fairly concede that though the claim towards gratuity is also made in the petition, in the light of the communication dated 28.08.2014 forfeiting the amount of gratuity under the provisions of Payment of Gratuity Act, 1972, the petitioner is not pressing his claim towards gratuity and would resort to appropriate remedy in that regard. He would rely upon the decision of the Apex Court in Bank of Baroda v. S.K. Kool (D) Through L.Rs and another, Civil Appeal No.10956 of 2013 decided on 11.12.2013.

6. Per contra, Mr. Nikam, the learned Counsel appearing for respondent Nos.2 to 6 - Bank would rely upon the provisions of Allahabad Bank (Employees') Pension Regulations, 1995 (hereinafter referred to as the 'Regulations'), particularly Rule 22 (1), which reads as under:

> ' '22. Forfeiture of Service :
>
> (1) Resignation of dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

7. He would further submit that the petitioner has committed gross misconduct of misappropriation of amount of ₹ 45,73,960/- and that therefore no pensionary benefits can be granted in his favour. He would submit that the penalty order uses the expression 'as would be due otherwise under the rules or regulations' and therefore under the provisions of Rule 22, the petitioner cannot claim pension or pensionary benefits.

8. The issue involved in the present petition is squarely covered by the decision of the Apex Court in Bank of Baroda v. S.K. Kool (supra). The Apex Court has considered the interplay between clause 6 (b) of the Memorandum of Settlement and Article 22 of the Regulations. The relevant portion of the judgment is reproduced below:

'Having considered the rival submissions we do not have the slightest hesitation in accepting the broad submission of Mr. Gupta that the Regulation in question is statutory in nature and the Court should accept an interpretation which would not make any other provision redundant. Bearing in mind the aforesaid principle, we proceed to consider the rival contentions.

The terms and conditions of service of the employees are governed and modified by the Bipartite Settlement. Various punishments have been provided under the Bipartite Settlement which can be inflicted on the employee found guilty of gross misconduct. In 2002, a Bipartite Settlement was signed by the Indian Banks' Association and the Banks' workmen's Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite Settlement, clause 6(b) was inserted as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:

"6 . An employee found guilty of gross misconduct may;

a) .....

b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or

xxx xxx xxx"

The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.

Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

"22. Forfeiture of service:

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for

superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that."

9. Thus, in the Bank of Baroda v. S.K. Kool (supra) the Apex Court has held that an employee inflicted with the punishment of removal from service is entitled to superannuation benefits. All the submissions made by Mr. Nikam for the Bank have been dealt with in the Apex Court decision. We would therefore proceed to follow the decision in S. K. Kool (supra). Consequently, we pass the following order:

ORDER

(i) The respondent - Bank is directed to pay all the superannuation benefits in the form of Pension, Provident Fund, Commutation of Pension and leave encashment to the petitioner with effect from 25.11.2011.

(ii) If any amount is already paid to the petitioner under any of the above heads, the same shall be adjusted while paying him the arrears of superannuation benefits.

(iii) Petitioner's entitlement to gratuity is not decided by us and he would be at liberty to canvass his claim for gratuity before the appropriate forum.

(iv) The order be complied with within a period of four months from today.

(v) The petition is accordingly allowed. Rule is made absolute in above terms.■

Petition Allowed.

[2023 (176) FLR 410]
(MADHYA PRADESH HIGH COURT)
VISHAL MISHRA, J.
W.P.No.8913 of 2019
February 3, 2022
Between
GENERAL MANAGER, CANARA BANK
and
SHRI PRAKASH N. MANDVE and others

Constitution of India, 1950-Article 226-Delayed payment of gratuity-Order of appellate authority in favour of employee-Only dispute remained with regard to interest due to delayed payment of gratuity-Held departmental and criminal proceeding initiated against the employee-Termination order was quashed by the High Court-In criminal case employee was acquitted-Petitioner promptly and without delay deposited the gratuity amount on demand by Prescribed Authority as the criminal case was pending against the employee-No delay on the part of petitioner-Employee not entitled for interest-Petition allowed.[Paras 14 to 18]

JUDGMENT

VISHAL MISHRA, J.-With the consent of the parties the matter is finally heard.

Challenge in this petition has been made to an order dated 10th July, 2019 passed by the Gratuity Appeals Nos. 60/18 and 61/18, whereby, Deputy Chief Labour Commissioner, Central Jabalpur has passed an order to pay gratuity amount alongwith interest to the respondent No.1. Challenge is being made on limited issue that whether the respondent No.1 is entitled for grant of interest for the delayed payment of gratuity by the authority or not?

2. It is pointed out that the petitioner are a cooperate body constituted under the Banking Companies Act, 1970 having its head office at Manipal and an incorporate office at Bangalore. The respondent No.1 was appointed on 2nd April, 1977 as Probationary Clerk by

the Bank and was confirmed on 28.10.1977. While working in the petitioner's bank at its Gandhi Bagh, Nagpur Branch between 09.11.2010 to 30.09.2011, the respondent by corrupt and illegal means or otherwise by abusing his official position demanded and accepted pecuniary advantage of ₹ 5000/- from one Rakhika, a customer of the Bank on 14th July, 2011. The respondent No.1 was trapped by ACB, CBI Nagpur on the complaint of the customer and after investigation, an FIR was registered against him for offences punishable under Prevention of Corruption Act and a charge-sheet has been filed against the respondent No.1. A departmental enquiry was drawn up against the respondent No.1 and charges were found to be proved and the disciplinary authority vide order dated 31st May, 2016 found that respondent No.1 liable for breach of Regulation 3(1) read with Regulation 24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 and punishment of dismissal from service was imposed upon the respondent No.1. An appeal preferred by the respondent No.1, was rejected and thereafter show-cause notice dated 19th October, 2016 was issued to the respondent No.1, wherein, he was asked to submit a reply as to why his gratuity amount should not be forfeited. A reply was duly submitted by the respondent No.1 and the authority after considering reply of respondent No.1 had decided that the act committed by the respondent No.1 falls within the purview of offence involving moral turpitude, therefore, he was informed that he was not entitled for any gratuity as per Rule 8(1)(ii) of the Payment of Gratuity Act, 1972.

3. The respondent No.1/employee aggrieved by the action of the petitioner/bank had raised a claim in prescribed form before the Regional Labour Commissioner (Central) Jabalpur. The case was registered as ALC 36-(45) and the Controlling Authority under Payment of Gratuity Act, 1972 and RLC, Bhopal. The controlling authority after considering the reply filed by the respondent No.1 as well as the evidence led by the authorities had arrived at a conclusion that the respondent No.1 was entitled for payment of gratuity and the claim to the tune of ₹ 10.00 lac was allowed in favour of the respondent/employee. Thereafter a notice was for payment of gratuity to the bank in prescribed form on 27.03.2018 was issued, but no claim was granted by the authority. An appeal was preferred by the respondent No.1 before the Deputy Chief Labour Commissioner, (Central) Jabalpur as well as by the

employer and the appeal were registered as Gratuity Appeal Nos.60/18 and 61/18. The appellate authority vide impugned order has dismissed the appeal filed by the employer i.e. the petitioner and has allowed the appeal filed by the respondent/employee and has further directed for payment of interest alongwith payment of gratuity.

4. It is submitted that the employee/respondent is not entitled for any interest as the appeal was not filed within time, the prescribed limit as provided under the Payment of Gratuity Act is 120 days and in terms of the Section 7 (7) of the Act, the appeal was filed with a delay without there being any explanation for the same. It is argued that the respondent/employee while in service was caught red handed by the CBI personnel and was placed under suspension and disciplinary action was taken against the respondent/employee. The disciplinary authority had terminated the services of the respondent/employee, but the aforesaid order of termination was quashed by this Hon'ble Court vide order dated 06.04.2018 passed in W.P.No.3011/2017, whereby, this Hon'ble Court while quashing the termination orders granted liberty to the authorities to pass a fresh order keeping in view the Syndicate Bank (Empoyees') Pension Regulations, 1995. Thereafter, the authorities have not chosen to take any action against the respondent/employee. It is further pointed out that a criminal case which was registered against the respondent/employee under the provisions of Prevention of Corruption Act, the respondent/employee has been honorably acquitted by the judgment of Special Judge vide order dated 23.09.2019 passed in Special CBI case No.34/11. It is submitted that once the respondent/employee has been acquitted by the Special Court and termination order has been quashed by this Court and there is no action subsequently taken by the authorities, the respondent/employee is duly entitled for interest. Reliance has been placed on the judgment passed by Hon'ble Supreme Court in the case of Union Bank of India v. C.G. Ajay Babu in Civil Appeal 8251/ 2018 decided on 14th August, 2018 and also in the case of Prakash M. Mandve v General Manager, Syndicate Bank, W.P.No.3011/2017 decided on 6.04.2018 holding that in such circumstances, the authorities have directed for payment of gratuity amount alongwith interest.

5. In the present case, the authorities have confined their challenge only with respect of interest part. It is submitted that both the appeals;

one submitted by the employer and other by the employee were taken into consideration for analogous hearing and were decided by a common order. The authorities have found no substance in the appeal preferred by the employer and the appeal preferred by the employee was allowed considering the aforesaid judgments of the Hon'ble Supreme Court and the law with respect of grant of interest on the gratuity amount. It is submitted that the pension and gratuity can only be withheld under exceptional circumstances and can be withheld only as per provisions mandate under the law. It is argued that Section 4 of the Payment of Gratuity Act has specifically prescribed for payment of gratuity. It is argued that only in terms of provisions of Section 4 sub- section (6) of the Act, the authorities can withhold the gratuity amount, therefore, there is no justification of the authorities in withholding the gratuity without even waiting for outcome of the criminal proceedings. Once there is a presumption that until and unless the employee or accused is held guilty and punished by the criminal court, he has always be treated as an innocent person. The respondent/employee stood retired during these proceedings, therefore, the authorities were duty bound to make payment of gratuity, even otherwise, the gratuity can only be withheld only in exceptional circumstances, whereby offence in the nature of forgery having ingredients of moral turpitude is being committed. As per the Banking Rules, the Bank can always withhold or recover amount towards the loss to the Bank and forfeiture of the gratuity amount is permissible to that extent only. Therefore, the order passed by the appellate authority granting interest to the respondent/employee is just and proper, does not warrant any interference in the present petition. He has prayed for dismissal of the writ petition.

6. Heard learned counsel for the parties at length and perused the record.

7. From a perusal of the record, the admitted position is that the respondent No.1 while in service in the Bank was caught red handed for taking bribe of ₹ 5000/- from the customer. He was placed under suspension and disciplinary proceedings were initiated alongwith criminal proceedings against him. The disciplinary proceedings ended in termination of service, which subsequently was put to challenge before this Court and this Court vide order dated 06.04.2008 passed in W.P.3011/2017 has quashed the termination order of the respondent/employee, however, extended

the liberty to the authorities i.e. even if they want, they can pass a fresh order. Admittedly no subsequent proceeding is drawn up by them, therefore, the order of this Court have attained finality. The respondent/employee was acquitted in the criminal case by all the authorities and it was an honorable acquittal. Thus, no charges were found to be proved against the respondent/employee. In such circumstances, the respondent/employee is entitled for payment of gratuity.

8. Even in this petition challenge is made by the authority to the extent of grant of interest. It is submitted that the matter was already sub-judiced by various Courts, therefore, until and unless a decision is taken, the authorities were dutybound and cannot pay gratuity amount to the respondent/employee. It is further argued that the appeal filed by the respondent/employee claiming interest amount itself is not maintainable as the same was filed with delay.

9. The Hon'ble Supreme Court in the case of Union Bank of India and others v. C.G. Ajay Babu and another has held as under:

"9. Section 4 the Act, to the extent relevant, reads as follows:

"4 Payment of gratuity.—(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest

the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation .— For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

xxx xxx xxx xxx

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment." (Emphasis supplied)

18. Though the learned Counsel for the appellant-Bank has contended that the conduct of the respondent-employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an

offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant- Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-Section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

20. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20.04.2004 that the "misconduct proved against you amounts to acts involving moral turpitude". At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law."

10. The Hon'ble Supreme Court in the case of Jaswant Singh Gill v. Bharat Coking Coal Ltd. and others has held as under:

"13. The Act provides for a closely neat scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non- obstante clause vis-a-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause of Sub-

section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent No. 1 was more than the amount of gratuity payable to the appellant. Clause of sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied."

11. The Hon'ble Supreme Court in the case of State of Jharkhand and others v. Jitendra Kumar Srivastava and another, has held as under:

"7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and others. v. Union of India; by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

"The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service? What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous

payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and others. wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and another v. Iqbal Singh."

8. It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300- A of the Constitution of India."

12. The Hon'ble Supreme Court in the case of State of W.B. v. Haresh C. Banerjee and others, has held as under:

"5. Articles 19(1)(f) and 31(1) have been repealed by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979. The right to property is no longer a fundamental right. It is now a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was a fundamental right at the time of framing of Rules in 1971. The question is whether a Rule framed under proviso to Article 309 of the Constitution providing for withholding of the pension would ipso facto be ultra vires, being violative of Article 19(1) (f) as it stood in 1971 when Rules were framed."

13. Thus, from the aforesaid analysis, it is clear that pension and gratuity are not the bounties, are the hard earned properties by rendering his services to the department and are declared to be a constitutional right.

14. The question before this Court for consideration is whether the respondent No.1 is entitled for interest on the delayed payment of gratuity. Some dates are important to be considered:-

Dates	Event
14.07.2011	FIR was registered against the respondent No.1 while he was in service;
19.06.2014	Charge-sheet was issued to him;
30.06.2014	He attained the age of superannuation;
31.05.2016	Termination order was passed after his superannuation;
18.11.2016	Appellate order affirming termination order was passed;
06.04.201	Both orders were quashed by this Court in W.P.No.3011/2017,
23.09.2019	He was acquitted in criminal case.

From the aforesaid, it is clear that criminal proceedings as well as disciplinary proceedings were drawn against the respondent No.1 while he was in service. Serious allegation of taking bribe was against him as he was caught red handed and the entire proceedings continued upto 23.09.2019 i.e. upto his acquittal in criminal case by the learned Special Judge.

15. The Hon'ble Supreme Court recently in the case of Chairman-cum-Managing Director, Mahanadi, Coalfields Limited v. Rabindranath Choubey, has considered the aspect of withholding of gratuity during pendancy of disciplinary proceedings and held as under:

> "10.17 Section 4 provides for payment of gratuity. Section 4(6) contains a non-obstante clause to sub-section (1). In case of service of the employee have been terminated for wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss so caused as provided under section 4 (6)(a). Even in the absence of loss or damage, gratuity can be wholly or partially forfeited under the provisions of section 4(6)(b), in case termination of services was based upon disorderly conduct or act of violence

on his part or offence involving moral turpitude committed during the course of employment. Thus, it is apparent that not only damage or loss can be recovered, but gratuity can be wholly or partially withheld in case services are terminated for the reasons specified in section 4 (6)(b).

10.31 Several service benefits would depend upon the outcome of the inquiry, such as concerning the period during which inquiry remained pending. It would be against the public policy to permit an employee to go scot-free after collecting various service benefits to which he would not be entitled, and the event of superannuation cannot come to his rescue and would amount to condonation of guilt. Because of the legal fiction provided under the rules, it can be completed in the same manner as if the employee had remained in service after superannuation, and appropriate punishment can be imposed. Various provisions of the Gratuity Act discussed above do not come in the way of departmental inquiry and as provided in Section 4(6) and Rule 34.3 in case of dismissal gratuity can be forfeited wholly or partially, and the loss can also be recovered. An inquiry can be continued as provided under the relevant service rules as it is not provided in the Payment of Gratuity Act, 1972 that inquiry shall come to an end as soon as the employee attains the age of superannuation. We reiterate that the Act does not deal with the matter of disciplinary inquiry, it contemplates recovery from or forfeiture of gratuity wholly or partially as per misconduct committed and does not deal with punishments to be imposed and does not supersede the Rules 34.2 and 34.3 of the CDA Rules. The mandate of Section 4(6)of recovery of loss provided under Section 4(6)(a) and forfeiture of gratuity wholly or partially under section is furthered by the Rules 34.2 and 34.3. If there cannot be any dismissal after superannuation, intendment of the provisions of Section 4(6) would be defeated. The provisions of section 4(1) and 4(6) of Payment of Gratuity Act, 1972 have to be given purposive interpretation, and no way interdict holding of the departmental inquiry and punishment to be imposed is not the subject matter dealt with under the Act.

11. In view of the above and for the reasons stated above and in view of the decision of Three Judge Bench of this Court in Ram Lal Bhaskar (supra) and our conclusions as above, it is observed and held that (1) the appellant - employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings, and (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service.

Under the circumstances, the impugned judgment and order passed by the High Court cannot be sustained and the same deserves to be quashed and set aside and is accordingly hereby quashed and set aside and the order passed by the Controlling Authority is hereby restored. However, the appellant-employer is hereby directed to conclude the disciplinary proceedings at the earliest and within a period of four months from today and pass appropriate order in accordance with law and on merits and thereafter necessary consequences as per Section 4 the Payment of Gratuity Act, 1972, more particularly Sub-section (6) of Section 4 the Gratuity Act and Rule 34.3 of the CDA Rules shall follow. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

16. From the aforesaid analysis, it is clear that the amount of gratuity can be withheld pending enquiry against an employee, if the proceedings were initiated while he was in service. There is no dispute with respect to the fact that the criminal as well as departmental proceedings were initiated against the respondent/ employee while he was in service. The disciplinary proceedings ended on 31.05.2016 and he was terminated from service. Termination was quashed on 06.04.2018 by this Court in W.P.No.3011/2017. In criminal case, he was acquitted on 23.09.2019. The petitioner/employer has deposited the amount of gratuity on 17.07.2018 with the controlling authority Bhopal vide demand draft No.503484 dt. 13.07.2018, as the criminal case was pending against the respondent No.1. Thus, it is clear that the petitioner/employer has taken a prompt action to deposit the gratuity

amount. It cannot be said to be with delay. Counsel for the petitioner has fairly stated that amount towards gratuity is received, but interest is not paid.

17. From the aforesaid analysis of the case, it is held that, there is no delay in making the payment towards gratuity. Respondent No.1 is not entitled for any interest on the gratuity amount, in view of the judgment of Hon'ble Supreme Court in the case of Rabindranath Choubey (supra).

18. The petition is allowed. No orders as to cost.■

Petition Allowed.

[2023 (176) FLR 622]
(SUPREME COURT)
M.R.SHAH and C.T.RAVIKUMAR, J.
Civil Appeal No. 9008 of 2022
(@ SLP (C) No. 18635 of 2022)
December 12, 2022
Between
D.N.KRISHNAPPA
and
DY.GENERAL MANAGER

Industrial Disputes Act 1947-Sections 17-B and 33-C (2)-Backwages claimed from the date of award-Order of reinstatement had attained finality-Tribunal allowed application under section 33-C (2) of Act-Directed to pay backwages from the date of award to the date of actual reinstatement-High Court set aside the award-Hence, instant appeal-Submission of the Bank that award dated 18.7.2007 of reinstatement was stayed by High Court and continued to be stayed till 12.9.2013 was unsustainable-Held, merely because there was a stay order of the order of reinstatement the Bank could not deny the backwages when ultimately the order of reinstatement came to be confirmed by the Court-Whatever was paid earlier to employee under section 17-B of Act would be adjusted-Impugned judgment set aside-Appeal allowed. [Paras 6 to 8]

JUDGMENT

M.R.SHAH, J.- Feeling aggrieved and dis-satisfied with impugned judgment and order dated 30.06.2022 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 7176/2021, by which, the High Court has allowed the said writ petition preferred by the respondent – bank and has set aside the order passed by the Central Government Industrial Tribunal – cum – Labour Court (hereinafter referred to as the CGIT/Labour Court) in an application under section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act) awarding wages for the period from 18.07.2007 to 23.09.2013, the employee – workman has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

2.1 That the appellant herein was working with the respondent – bank. In the departmental proceedings he was dismissed from service on 27.09.1996. The order of dismissal was challenged by the appellant before the CGIT under section 10(2)(a) of the ID Act. By the award dated 18.07.2007, the CGIT set aside the order of dismissal and passed an order of his reinstatement with 50% backwages and withholding four annual increments with cumulative effect from the date of order of punishment. The said award was challenged before the High Court by the bank as well as the appellant herein. The learned Single Judge by judgment and order dated 18.04.2013 confirmed the order of reinstatement, however, reduced the backwages from 50% to 25%. In the appeal(s), the Division Bench of the High Court also confirmed the order of reinstatement passed by the CGIT, however held that the appellant is not entitled to any backwages. The judgment and order dated 12.07.2013 was the subject matter of Special Leave Petition (s) before this Court. This Court dismissed the Special Leave Petition(s). Thus, the order of reinstatement in terms of award dated 18.07.2007 attained the finality. That thereafter, the appellant came to be reinstated on 23.09.2013.

2.2. That neither was he reinstated earlier in spite of award dated 18.07.2007 nor was he paid full wages from the date of award i.e., 18.07.2007, therefore, he again approached the CGIT by filing an application under section 33-C(2) of the ID Act claiming backwages from the date of award dated 18.07.2007 passed by the CGIT till his

actual reinstatement. The CGIT allowed the said application and directed the bank – employer to pay the wages due from the date of award to the date of actual reinstatement. The bank preferred the present writ petition before the High Court. By the impugned judgment and order, the Division Bench of the High Court has set aside the order passed by the CGIT relying upon the decision of this Court in the case of Bombay Chemical Industries v. Deputy Labour Commissioner and another and has observed and held that CGIT had no jurisdiction to decide the application under section 33-C (2) of the ID Act. Feeling aggrieved and dis-satisfied with the impugned judgment and order passed by the Division Bench of the High Court, the employee – workman has preferred the present appeal.

3. Shri Shailesh Madiyal, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in setting aside the order passed by the CGIT under section 33-C(2) of the ID Act directing the bank to pay the wages from the date of order of reinstatement passed by the CGIT vide award dated 18.07.2007 to the date of actual reinstatement i.e., 23.09.2013.

3.1 It is vehemently submitted that the order of reinstatement had attained the finality and therefore, the appellant ought to have been reinstated and/or is entitled to all the benefits including the wages from the date of award dated 18.07.2007 till the date of actual reinstatement.

3.2 It is submitted that the High Court has misread and/or mis-applied the decision of this Court in the case of Bombay Chemical Industries (supra). It is submitted that the ratio of the judgment in Bombay Chemical Industries (supra) is that an unadjudicated claim cannot be the subject matter of proceedings under section 33-C (2), and the CGIT can only interpret the award or settlement on which the claim is based. It is submitted that in the present case what was sought was implementation of award dated 18.07.2007 as modified by the Division Bench of the High Court. It is submitted that therefore, the application claiming the wages and other benefits from the date of award of reinstatement passed by the CGIT on 18.07.2007 was maintainable.

3.3. Relying upon the decision of this Court in the case of Namer Ali Choudhury and others v. Central Inland Water Transport Corporation

Ltd. and another,(para 4), it is submitted that as observed and held by this Court once there is an award and question arises as to the amount of money due under the award, the same would be the subject matter of proceedings under section 33-C (2) of the ID Act. 3.4 It is submitted that if the impugned judgment and order, the High Court interfering with the order of CGIT is upheld and the submissions on behalf of the bank is accepted, in that case, the appellant – employee/workman has to suffer for no fault of him by denying the wages from the date of award of reinstatement passed by the CGIT/Labour Court which as such had attained the finality.

3.5 It is submitted that the submissions on behalf of the bank that because there were stay order(s) from time to time after the award was passed and because the award was the subject matter of challenge before various Courts up to 12.07.2013, the appellant was not required to be paid the wages from the date of award till the actual reinstatement on 23.09.2013 is concerned, it is submitted that as a matter of fact the award dated 18.07.2007 to the extent of directing the bank to reinstate the appellant had attained finality and the same has remained un-interfered with. It is submitted that mere pendency of proceedings does not dilute the requirement of reinstatement in terms of the award with all its consequences including payment of wages.

3.6 Making the above submissions and relying upon the decision of this Court in case of M.L. Bose & Company Pvt. Ltd. v. Employees; it is prayed to allow the present appeal.

4. Present appeal is vehemently opposed by Shri Rajesh Kumar Gautam, learned counsel appearing on behalf of the respondent – bank. It is submitted that in the facts and circumstances of the case as such the High Court has not committed any error in quashing and setting aside the order passed by the CGIT under section 33-C(2) of the ID Act granting wages from the date of award of reinstatement passed by the CGIT on 18.07.2007 to the date of actual reinstatement. It is submitted that as such the operation of award dated 18.07.2007 remained stayed by the High Court as the said interim order continued till disposal of the writ appeals on 12.07.2013. It is submitted that as per the settled position of law the interim order passed by the High Court always merges with the final order. It is submitted that thus as in the present case interim stay granted by the High Court on the operation of award dated

18.07.2007 continued till the disposal of the writ appeals on 12.07.2013, therefore, award dated 18.07.2007 as modified by the final order dated 12.07.2013 passed by the Division Bench of the High Court becomes final and enforceable only on 12.07.2013. It is submitted that therefore, the appellant shall not be entitled to claim backwages for the period from 18.07.2007 to 12.07.2013.

4.1 It is further submitted by the learned counsel appearing on behalf of the bank that since award dated 18.07.2007 remained stayed by the High Court till 12.07.2013, therefore, in view of the provisions contained in section 17-B of the ID Act, the appellant was paid last drawn wages amounting to ₹ 3,18,782.36/- for the period during the period the award passed by the CGIT remained stayed. It is submitted that since the last drawn wages as provided under section 17-B of the ID Act have been paid during the period award passed by the CGIT remained stayed by the High Court, even for the said period also the appellant is not entitled to full backwages, as is being claimed by the appellant.

4.2 It is further submitted by the learned counsel appearing on behalf of the bank that even on the principle of merger the appellant shall not be entitled to any backwages from the date of award i.e., 18.07.2007 till the judgment and order passed by the Division Bench of the High Court. It is submitted that applying the principle of merger, only the final judgment and order dated 12.07.2013 passed by the Division Bench of the High Court shall be executable and enforceable. Reliance is placed on the decision of this Court in the case of Kunhayammed and others v. State of Kerala and another.

4.3 Making the above submissions and relying upon the above decision, it is prayed to dismiss the present appeal.

5. We have heard learned counsel appearing on behalf of the respective parties at length.

5.1 The short question which is posed for consideration of this Court is whether the appellant shall be entitled to the full wages from the date of award of reinstatement i.e., 18.07.2007 passed by the CGIT to the actual date of reinstatement i.e., 23.09.2013?

6. It is the case on behalf of the bank that as the award dated 18.07.2007 of reinstatement passed by the CGIT was stayed by the

High Court and continued to be stayed till 12.07.2013, the appellant shall not be entitled to the wages from the date of award dated 18.07.2007. It is also the case on behalf of the respondent – bank that award dated 18.07.2007 ultimately merges with the judgment and order dated 12.07.2013 passed by the Division Bench of the High Court and therefore, the order passed by the Division Bench of the High Court would be enforceable on the principle of merger. It is also the case on behalf of the bank that during the pendency of the stay of the order of reinstatement dated 18.07.2007, the appellant was paid the last drawn wages under section 17-B of the ID Act, the appellant shall not be entitled to any further wages/backwages from the date of the award of reinstatement dated 18.07.2007 to the final judgment and order passed by the High Court dated 12.07.2013.

7. Having heard learned counsel appearing on behalf of the respective parties and considering the facts narrated hereinabove, it emergers that the order of reinstatement vide award dated 18.07.2007 has been confirmed up to the Division Bench of the High Court and even by this Court. What was modified by the High Court was the backwages from the date of termination till the date of award passed by the CGIT. It was the bank – employer who obtained the stay order against the order of reinstatement which ultimately came to be terminated on 12.07.2013 when the Division Bench of the High Court dismissed the writ appeals. As observed hereinabove, it was the employer – bank who obtained the stay against reinstatement and ultimately order of reinstatement attained the finality. Why should the employee be made suffer, when the bank obtained the stay of reinstatement and when the order of reinstatement subsequently came to be confirmed and attained the finality?

7.1 So far as the submissions on behalf of the bank that the interim order merged with final order dated 12.07.2013 and therefore, the appellant is not entitled to claim the backwages for the period between 18.07.2007 and 12.07.2013 is concerned, at the outset, it is required to be noted that the interim order is always subject to the final order that may be passed finally while terminating the proceedings. Interim orders are always subject to the final decision. Therefore, merely because there was an interim order/stay of the order of reinstatement during the pendency of the proceedings, the employee – appellant cannot be denied the backwages/wages when ultimately the order of reinstatement came to be confirmed by the Court.

7.2 Similarly, the submission on behalf of the bank applying the principle of merger has also no substance. In the present case as such the order of award of reinstatement has been confirmed by the Division Bench of the High Court. Therefore, the order of reinstatement will rely back to the original order passed by the Labour Court. Merely because the reinstatement order was under challenge and there was a stay of the order of reinstatement during the pendency of the proceedings before the High Court, it cannot be a ground to deny the wages to the employee when ultimately the order of reinstatement came to be confirmed and attained the finality.

7.3 Now so far as the submissions on behalf of the bank that as during the pendency of the proceedings before the High Court and for the period during the stay of order of reinstatement, the appellant was paid the last drawn wages under section 17-B of the ID Act and therefore he is not entitled to any wages for the period during the stay is concerned, there is no substance. At the most, whatever is held to be entitled to pay the appellant – employee as wages from the order of award of reinstatement till actual reinstatement, whatever is paid under section 17-B of the ID Act, the same is to be deducted and/or adjusted.

7.4 Now reliance placed upon the decision of this Court in the case of Bombay Chemical Industries (supra) considered by the High Court is concerned, as such the High Court has mis-applied the said decision to the facts of the case on hand. In the present case, the claim of the appellant was adjudicated upon. The appellant approached the Industrial Tribunal by way of an application under section 33-C(2) of the ID Act for implementation of award dated 18.07.2007. Therefore, so far as the order of reinstatement and the wages claimed on the order of reinstatement is concerned, the same were already adjudicated upon. In the case of Bombay Chemical Industries (supra), it is observed and held that un-adjudicated claim cannot be the subject matter of proceedings under section 33-C(2) and in the proceedings under section 33-C(2), the Tribunal can only interpret the award or settlement on which the claim is based. Under the circumstances, the said decision shall not be applicable to the facts of the case on hand.

8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the Division Bench of the High Court allowing the writ petition preferred by the respondent – bank and quashing and setting aside the order passed by the CGIT

under section 33-C(2) of the ID Act directing the bank to pay the wages from 18.07.2007 to 23.09.2013 is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. It is held that the appellant shall be entitled to the full wages with all emoluments from the date of order of reinstatement i.e., 18.07.2007 to the date of actual reinstatement i.e., 23.09.2013, however, after adjusting/deducting the amount already paid under section 17-B of the ID Act. Present appeal is allowed accordingly to the aforesaid extent. No costs.■

Appeal Allowed.

[2023 (176) FLR 644]
(ALLAHABAD HIGH COURT)
Mrs. SANGEETA CHANDRA, J.
Writ-A No. 11339 of 2022
November 16, 2022
Between
AJAY KUMAR MISHRA @ AJAY MISHRA
and
UNION BANK OF INDIA and others

Compassionate Appointment-Claim was rejected on the ground of lack of essential qualification-Income of mother and petitioner and the financial condition of petitioner's family was also considered-Hence present writ petition-Petitioner was 33 years old-He was married and had three children-His younger brother was also married and had children –No interference with the order impugned however, petitioner was entitled for an ex gratia payment to be given to the family of the deceased –Petition dismissed. [Paras 10 to 12]

JUDGMENT

Mrs. SANGEETA CHANDRA, J.- Heard learned counsel for the petitioner and Shri Vivek Ratan Agrawal, learned counsel appearing for the respondent-Bank.

2. The present petition has been filed praying for quashing of the order dated 25.05.2022 passed by the Managing Director/Chief Executive Officer, Union Bank of India, Varanasi and further praying for ***a mandamus*** to be issued to be issued to the respondents to appoint the petitioner in place of his father on compassionate ground

under Dying in Harness Rules, 1974.

3. It has been submitted that the father of the petitioner late Ramsamujh Mishra was posted as Class IV employee in the Bank Branch at Jaunpur and he died on 15.01.2018 in harness. The petitioner's father left behind his widow namely Shiv Devi and his 3 sons ***i.e***. the petitioner Ajay Kumar Mishra @ Ajay Mishra Vijay Mishra and Ankit Mishra. The family of the petitioner is in very poor financial condition. Therefore the petitioner moved an application for compassionate appointment on 11.07.2019 to the Branch Manager at Jaunpur to refer the matter to the competent authority. Formalities for making applications for appointment on that ground was completed by the petitioner thereafter repeated reminders were also sent to the Branch Manager. The application of the petitioner was kept pending and ultimately rejected by the orders impugned after the petitioner was forced to file Writ A No. 5800 of 2022 which was disposed of by this Court with a direction to the respondent Bank to expeditiously decide the petitioner's application. The Selection Committee constituted by the respondent No.1 took into consideration extraneous matter relating to income of the family of the petitioner. He has not been found suitable as according to the impugned order he does not possess the possess the essential qualification required for the job. The financial position of the family has been considered taking into account provident fund gratuity leave encashment and other term benefits and also family pension and agricultural income. The family only has 1 bigha of land but somehow the respondents have come to be conclusion that the mother of the petitioner earns ₹8,000/- per month and the petitioner earns ₹4,000/- per month from agriculture. No opportunity of hearing was given to the petitioner to dispute the computation of income by the Committee which has been made the basis of the impugned order.

4. Shri Vivek Ratan Agrawal learned counsel for the respondents on the basis of counter-affidavit filed by the respondents has argued that the petitioner's father late Ramsamujh Mishra had died while working as House Keeper on 15.01.2018. The current scheme for compassionate appointment prevailing in the Bank as circulated on 19.01.2015 has been filed as Annexure No. 1 to the counter-affidavit. Initially an application for compassionate appointment was made by the petitioner's family on 27.11.2018 which was incomplete. The requirements were communicated to the family and complete application was received by the Central Office only on 09.05.2022. In the meanwhile the petitioner has approached this Court in Writ A No.

5800 of 2022 which was disposed of by this Court by its order dated 21.04.2022 directing the consideration of the petitioner's claim. The application of the petitioner was thereafter put up before the 3 members Committee constituted in accordance with the Circular dated 19.01.2015. The Scheme relates to grant of compassionate appointment to the dependent family members of an employee who either retires on medical grounds before the age of 55 years or who dies in harness. It is applicable for all cases that occur on or after 05.08.2014. The scheme also covers cases of missing employees subject to certain conditions. The Bank may either consider a family member for compassionate appointment or pay lumpsum ***ex-gratia*** amount as compensation under the scheme . Compassionate Appointment can be given to a family member who is wholly dependent on the deceased employee as defind in its Bipartite Settlements from time to time.

5. The Committee has been granted the power to ascertain the dependency of the family member and as per the eligibility ***criteria*** given in the scheme the family should be indigent and nearing financial destitution and the candidate should be eligible and suitable in all respects under the relevant Recruitment Rules.

6. The Committee of 3 members had examined the financial status of the family and found that late Ramsamujh Mishra had about 3 years and 4 months of service left. He was survived by his widow and 3 married sons including the petitioner. At the time of making of application the applicant was aged about 33 years and 11 months and had passed Class IX in the year 1999. The petitioner's son was studying in an Inter College and his 2 daughters were studying in Class VI. The family received net financial benefits to the tune of ₹1,00,000/- or more. The family pension which was made available to the widow of the deceased employee was ₹ 10,547/- per month. The income certificate submitted by the petitioner and his family members were taken into account and it was found that Smt. Shiv Devi earned ₹ 8,000/- per month and the petitioner Ajay Mishra earned ₹ 4,000 per month from agriculture. Besides monthly interest on terminal benefits at the rate of 6.75% which came to around ₹5,983/- per month. The Committee calculated the net monthly income of the family from all sources after the death of late Ramsamujh Mishra as ₹ 28,530 per month which was more than the last drawn monthly salary Ramsamujh Mishra of ₹28,456. Hence the Committee came to the conclusion that the family could not be considered as financially indigent.

7. The recruitment ***criteria*** for Sub Cadre Staff was also considered and it was found that maximum age for appointment after due relaxation for reserved category was 35-40 years respectively. The petitioner was 33 years 11 months of age at the time of making application and he had passed in Class IX in 1999 and not Class X or its equivalent. Taking into account the age and educational qualifications of the petitioner also the Committee came to the conclusion that the petitioner was not entitled to be appointed on compassionate ground.

8.The petitioner has filed a rejoinder affidavit to the counter-affidavit filed by the respondents and has not denied that the Income Certificates considered by the 3 members Committee were supplied by the petitioner and his other family members. It has not been disputed by the petitioner that he has a son studying in Class XII and two daughters studying in Class VI or that the family had received Terminal benefits and that his mother was also getting family pension besides having agricultural income.

9. Shri Vivek Ratan Agrawal learned counsel for the respondents has placed reliance upon a judgment of Co-ordinate Bench of this Court in ***Raj Kumar Maurya v. Union of India and others***, where in a similar matter relating to the same Bank the Court had considered an order of refusal to grant compassionate appointment on the ground that the family could not establish a situation of financial distress and also on the ground that educational and other ***criteria*** could not be fulfilled by the applicant. This Court placed reliance upon a Full Bench decision rendered in the case of ***Shiv Kumar Dubey and others v. State of U.P. and others*** wherein Full Bench in paragraph No. 29 had observed as follows:

"29 We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate

appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or as the case may be the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the breadearner.

(iv) In determining as to whether the family is in financial crisis all relevant aspects must be borne in mind including the income of the family its liabilities the terminal benefits received by the family the age Dependency and marital status of its members together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do

not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made the operation of the rule is not suspended during the minority of a member of the family".

10. This Court in its Full Bench decision has observed that there is no general or vested right to compassionate appointment. The compassionate appointment can be claimed only where Scheme or Rule provided for such appointment. Where such provision is available in the Scheme the application for compassionate appointment shall fall strictly within the Scheme. It should be offered to the dependent family members only to avoid immediate financial crises caused by the death of the bread earner and to determine where the family is in financial crises all relevant factors must be borne in mind including the income of the family its liabilities the term benefits received by the family the age dependency and martial status of its members together with the income from any other sources.

11. This Court while believing the statement made in the writ petition cannot come to the terms with the assertions made that the petitioner is married and is more than 33 years old has three children who are studying and his younger brothers who are also married and have children were all dependent upon the income of mere ₹ 28,456/- of late Ram Ramsamujh Mishra and would fall into indigent condition and financial destitution due to the death of such employee. This Court therefore finds no good ground to show interference in the order impugned the writ petition stands dismissed.

12. Since the Scheme that has been framed and relied upon by the respondents also provides for ***ex-gratia*** payment to be considered to be given to the members of the family of deceased employee. The petitioner will be at liberty to make appropriate application to the Bank within three weeks from today. If such an application is made the Bank shall consider the same and the competent authority shall pass appropriate order within a period of eight weeks from the date of receipt of application along with a copy of this order.

Petition Dismissed.

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