From the Desk of Editor

ROLE OF DEFENCE ASSISTANTS/ REPRESENTATIVES

The role of a defence representative is to provide support and guidance and ensure that the employee receives a fair and just hearing and that his/her rights are protected throughout the domestic enquiry process.

In terms of the principles of natural justice, the officer employee against whom the Departmental Enquiry is proposed may take the assistance of another officer for his defence in the enquiry, subject to the relevant rules. An officer, for instance, cannot take in hand more than three cases, as a defence representative. The exercise of the choice for the Defence Representative of the Officer employee is not restricted in any manner. A defence representative of an officer employee may be replaced or substituted at any stage of the enquiry proceedings by another officer employee of the choice of the delinquent officer, if so, needed by him for his proper defence.

The Officers' Association is a protecting umbrella as well as a friend in need. We should look at it from two angles; first it is duty of the Association to assist its members whenever he seeks such assistance. The only requirement is that he should have complied with his part of the obligation to pay subscription and abide association's directions on various activities. The second angle is very sensitive. As an office-bearer or activist, we should not sit on judgment against the member. We can't be judge, we can only help to ascertain the truth amid our social system where a criminal is hounded out even before the judge convicts him.

A big Salute to the office bearers/activists for coming forward as Defence Representatives. As broad guidelines for the defence, we have compiled some tips - DO's and DON'Ts:

➡ The first job of the Defence Assistant on acceptance of a role or the assignment is to affect a morale booster and prepare the Charge Sheeted Official to face the problem with courage, determination and firmness.

➡ When an officer is served with the Charge Sheet, the public perception is that he must be guilty. He becomes an unwanted person for his own colleagues. When the Management is gunning for him, it is the duty of the Defence Representative to empathise with the CSO.

➡ Before representing a colleague in a domestic enquiry, it is important to understand the bank's policies and procedures. In order to put up an effective defence in the enquiry, always keep a copy of the conduct rules and disciplinary procedure rules, by which the charged official is governed, with you when you go to attend the enquiry proceedings. You must always have with you a good book on departmental enquiries at that time for guidance in crucial hours.

➡ Always keep ready the complete file or the case, even if you are appearing before the Enquiry Officer for demanding adjournment, or even if you are sure that witnesses of prosecution are not going to appear. A slight carelessness may get you into trouble sometimes.

➡ Always accompany the charged officer during inspection of files, for preparing defence or during inspection of management's documents. It is your expertise and clear vision about the defence of the employee that has to guide the inspection of documents/files. An in-experienced and worried charged official may do untold harm to the case in your absence, if you do not accompany him. Moreover, there is

sometimes a sea change in the attitude of concerned officials, in whose presence such inspection is to be conducted, when Defence Assistant is present with the charged official during such Inspection.

➡ Tell the Charged Official to maintain patience and not to get excited even under adverse circumstances.

➡ While being careful to take with you the relevant files of the case at every hearing, however insignificant that hearing may be, the whole enquiry records is to be maintained in four files, to enable you to have a quick look at any document, in case of need:

(a) Enquiry proceedings file-strictly in chronological order.
(b) Management's witnesses' evidence/documents file.
(c) Defense documents/ witnesses file.
(d) Important and confidential papers file (if any).

➡ If possible, keep all important documents in duplicate.

➡ Don't hesitate to consult other learned or experienced persons, if you have doubt on some point.

➡ All correspondence emanating from you or from the charged official should type-written neatly. It has its own impression and advantages.

➡ Work hard before every date and prepare your case properly. Do not go to attend the proceedings without doing your homework properly.

➡ Get your legitimate objections, wherever required, recorded at the earliest opportunity.

➡ Get your questions, if any, declared irrelevant during cross- examination recorded in the proceeding. This will help

the Court to effectively scrutinise the proceedings when case goes to Court of law.

➡ Please request the Enquiry Officer for his intervention as and when the Presenting Officer asks any leading questions to the prosecution witnesses.

➡ Don't consult the witnesses or approach them before their cross-examination by you. This apart from being a dishonest approach will not only weaken your own conscience and confidence, but will also counter-productive many a times. Many times, the prosecution witnesses contact you in their own interest or on advice of the Presenting Officer.

➡ Advise the charged official not to utter anything in despair even in adverse circumstances. He should not speak at all during enquiry unless Defence Representative advise him to do so. He may however tell DR in whisper if he has anything relevant and useful to be disclosed to DR urgently.

➡ During mandatory questions put to the CSO, you have right to remain present, as your presence gives courage and confidence to the charged official.

➡ Tell the Enquiry Officer about the true ambit of mandatory questions if he is stepping out of the legitimate limits of mandatory questions. Don't allow it to become a cross-examination of the charged official.

➡ Avoid giving a certificate to the enquiry officer about your satisfaction over the manner of enquiry, even if he insists on it. Such a certificate will stop you from challenging the enquiry proceedings. (Ref.: Harmander Singh v. General Manager, Northern Railway, 1973 SLJ 569) (P & H HC).

➡ Tell your CSO that he should not hob-nob with the Presenting Officer. He must not divulge his defence during "off-the record" conversation with the Presenting Officer.

➡ Be courteous and respectful to the Presenting Officer and the Enquiry Officer. Don't level allegations of bias against them unnecessarily. An unbiased Enquiry Officer or Presenting Officer may become biased after such allegations.

➡ While keeping your defence closely guarded, and keeping your cards close to your chest, be truthful while talking to the Enquiry Officer and Presenting Officer. Do not mislead them. Maintain your credibility in their eyes.

➡ Be careful to include the names of material documents and material or important witnesses in your list also, even though their names figure in management's list.

➡ Don't examine charged official in his own defence, as it will give an opportunity to the Presenting Officer to conduct his elaborate cross-examination.

➡ Don't demand adjournments unless extremely unavoidable.

➡ Check the chargesheet thoroughly to note any inherent defects, and decide for yourself whether you are to lodge objections immediately, i.e., at earliest opportunity or during your written arguments, depending upon nature of defect.

➡ If during a case, you happen to know something adverse regarding the conduct of the charged official, please tell him to improve in future, lest he should be emboldened to repeat similar misconducts in future also. But please do not tell Enquiry Officer or Presenting Officer to mend the charged official, nor harm his case by ceasing to take active interest. Double standards do not take you anywhere.

➡ Be alert when Presenting Officer is re-examining the prosecution witnesses, so that he may not try to get evidence on new points on which the said witness was not examined earlier.

➡ Resist with all your might any new evidence sought to be introduced after close of prosecution case, if that was not listed in the annexure accompanying the chargesheet.

➡ Consolidate all your objections as the enquiry progresses. Consolidate all the objections made earlier once again in written briefs. All these objections as well as new objections against the appraisal of evidence and conduct of enquiry proceedings should again be listed while replying to the show cause notice against proposed penalty, and so on during appeal, and review etc

➡ You must insist on getting a copy of the written briefs from the Presenting Officer before you submit the written briefs on behalf of the charged official.

➡ Raise all the relevant law points (say, the allegations even if proved don't amount to any misconduct/or specified misconduct, or that charges were vague, or that enquiry proceedings were stale, etc.), during written arguments also, even if omitted to be raised at earlier stages. Repeat all these points in reply to show cause notice proposing penalty, in appeal as well as in review application, otherwise it may be held by the Court that you did not press your objection, or that you had by your conduct waived the objection made earlier.

➡ If at any stage a recourse to law court is unavoidable, please advise the Charged Official to follow that course.

➡ Associate yourself completely with the charged official at the stage of drafting reply to the chargesheet, as that stage is one of the most vital stages in departmental enquiry, and the whole defence has to be constructed on the foundation of that reply.

➡ Scrutinize very closely the list of documents and witnesses cited by the Disciplinary Authority along with charge

sheet. Take this opportunity to lodge your objections in such a manner so as to eliminate/exclude all irrelevant documents/ witnesses by building up proper pleas.

➡ Hold your cards close to your chest, and if need be, keep your vital points of defence guarded from the Charged Official also, so that he may not disclose the same to somebody interested in the case in "off-the record" conversation.

➡ Ensure that important documents/letters, like arguments are signed by charged official only, and only in exceptional circumstances by you, as his defence assistant.

➡ Ensure that CBI officials etc. do not sit in the enquiry officer's chamber during enquiry as they have no right to be there at that time.

➡ As your own record, please keep copies of all important enquiry records, like written briefs, appeals, reply to show cause notices, review applications with you in your personal computer or laptop. It will save your energy and time while drafting similar communications in future, and also will ensure that no important law points are left untouched.

➡ Don't hob-nob with Presenting Officers. Their interests and their own narrow view come in conflict with that of the Charged Officials. A Presenting Officer is generally over-ambitious to prove the department's case.

➡ Don't use your influence with Enquiry Officer in getting favourable verdict from him. This will make you dishonest in your approach, this will weaken your will power to work effectively, and your own talents may diminish instead of improving.

➡ Please see to it that no document demanded by the charged official is declared "irrelevant" while it is actually "missing" or the department wants to withhold it intentionally

to win the case against charged official by hook or crook.

➡ In giving relevancy of documents sought by the charged official, do not write such details. Write "title of document is self evident as relevant", or "relevancy apparent from title" etc. Only give details wherever extremely necessary.

➡ Resist strongly any claim of privilege in producing any document. Try to learn the law as to who can claim privilege, in what kind of documents, and in what manner.

➡ Cross the witnesses of prosecution effectively with all the skill at your command, and prepare well before doing cross-examination.

➡ Don't get excited if you suddenly find any lacuna in prosecution evidence. Try to see what lacunas remain in your defence witnesses' evidence, and also which emerge from cross-examination by Presenting Officer, and plug the same through re-examination or by advising the Charged Official to plug the same while replying to mandatory questions. This you can do only if you are quite vigilant and alert during the enquiry.

➡ Don't accept undue hospitality from charged official. Don't accepts 'gifts' from him in any case.

➡ While you must make all out efforts and use all your skills to prove innocence of the charged official, please do not make any case a point of your prestige, otherwise you may be tempted to use foul means for winning the case.

➡ Don't take your family along with you during hearings otherwise you will be giving invitation to the charged official to corrupt you by bestowing 'gifts' or undue hospitality upon you.

➡ You have very useful forum for improving the service

conditions, for removing certain special types of ills existing in the department, which you can expose without fear in the departmental enquiry, and get them eradicated. Decisions that you can get from the Disciplinary Authority or the Appellate Authority on some point of law in their orders, will act as precedents against department while disposing similar points in future.

➡ Try to attend seminars or other meetings of experts on disciplinary proceedings, whenever you get an opportunity. Discussions bring out new and important points and present solutions to vexed problems.

➡ While being respectful, do not be afraid of Enquiry Officers. Place your points politely but forcefully.

➡ In your own department, while working as employee, do not shirk work. Be honest and devoted and faithful in your approach to your duties and the department. That will make you better equipped in your job as defence assistant also, and reduce the chances of management making you a "Charged official" by exploiting your own omissions/commissions.

➡ Don't bestow lavish hospitality on Presenting Officer/ Enquiry Officer, otherwise you will be spoiling their habits and making them corrupt and "demanding" in their attitude towards other employees also.

➡ While drafting submissions/appeals/representations, leave sufficient margins on both sides of the page, to enable the concerned authorities to give their remarks conveniently in the margins. Such small gestures give good impression.

➡ While cross-examining, or drafting written arguments or explanation to the show cause notice, please remember to deal with all relevant and vital points, as any point which remains unrebutted by you may be used against your charged official's case (M.K. Mishra v. Union of India, 1986(2) SLR

303) (Cal. HC)). On the other hand, find out such unrebutted pleas which were raised by you, to highlight those at appropriate stages.

➡ Keep abreast with law relating to service regulations. Subscribe atleast one good journal on service law or on departmental enquiries.

➡ During personal hearing of the charged official you may insist on your right to accompany the charged official. He may be advised to make such request to the Disciplinary Authority.

➡ If CSO is found guilty and you believe that the decision is unfair or unreasonable, you should advise CSO to appeal. The appeal process may involve a review of the evidence presented during the hearing and an examination of the procedures followed.

The job of Defence Representative is a challenging task that requires knowledge of the bank's policies and procedures, strong advocacy skills, passion to serve without expectation of reward and an ability to challenge evidence effectively. By following the tips outlined above, a defence representative can help to ensure that officer proceeded against receives a fair hearing and that the process is conducted in accordance with the law.

The reward of selfless service is often not something that can be measured in material or tangible terms. Instead, the satisfaction and fulfillment that comes from helping others and making a positive impact is deeply meaningful and valuable experience. It can also cultivate qualities such as empathy, compassion, and generosity, which can enrich one's relationships and overall quality of life.■

"Helping one person might not change the world, but it could change the world for one person." . Anonymous

CAN'T PROBE GOVERNMENT STAFF AFTER 4 YEARS OF RETIREMENT, HC TELLS HARYANA

Article by AJAY SURA @ timesgroup.com

Let Bygones Be Bygones'

CHANDIGARH: Making it clear that departmental proceedings cannot be initiated against a retired government employee, the Punjab and Haryana high court has observed that after the statutory period of four years, a retired employee should be left to live in peace. The HC has passed these orders while setting aside the departmental proceedings initiated by Haryana government against a retired police officer under the Haryana Civil Service Rules.

MEMORY FADES WITH AGE

The alleged misconduct on his part should be allowed to settle with the effect of time. The rationale also appears to be based on the phrase "let bygones be bygones' for retirees and because memory fades with age as also for the reason that it is not easy for a retiree to have access to the relevant record or colleagues, who may have also retired an settled elsewhere, making it difficult for him to effectively defend himself." Justice Deepak Sibal of the Punjab and Haryana high court

"The apparent object behind these rules seems to be that a retired employee, after the statutory period of four years, should be left to live in peace in the twilight zone of his life," Justice Deepak Sibal maintained while allowing a plea filed by Raj Pal, a retired inspector of Haryana police.

Pal who had sought quashing of the order dated October 5, 2021. Dropping the proceedings, the HC has held that a harmonious reading of Rules 12.2(b) and 12(5)(a) of Haryana Civil Service Rules leads to only one irresistible conclusion that after an employee has retired from service there is a complete embargo on the initiation of departmental proceedings against him in

respect of event(s) which may have taken place more than four years prior to the initiation of the departmental proceedings.

A departmental inquiry against him under Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 (for short, the Rules), was ordered on the ground that between 1986 and 1988, while he was posted as an inspector in Karnal, he had also passed his LLB course from Rajasthan and therefore could not have been present at two places at the same time.

His counsel senior advocate B S Rana contended that the petitioner retired from service on June 30, 2019, and even the extension of his service for one year ended on June 30, 2020, and since after his retirement he was sought to be departmentally proceeded against for an alleged misconduct which took place in 1986-88, which was well beyond four years from the date of the petitioner's retirement. He argued that the impugned departmental proceedings were barred under Rule 12.2(b) read with Rule 12(5)(a) of the Rules.

After hearing the plea, the HC ordered to set aside the departmental proceedings against the petitioner observing that the alleged misconduct by the petitioner is prior to four years from the date of issuance of the charge-sheet.

"Since by that time he had retired, such action on the part of the state is barred under Rule 12.2(b) read with Rule 12(5)(a) of the Rules and therefore unsustainable. Resultantly, the impugned departmental proceedings against the petitioner are quashed," observed the HC in its December 7 orders.■

[2022 (175) FLR 363]
(SUPREME COURT)
INDIRA BANERJEE and J.K.MAHESHWARI, JJ.
Civil Appeal No. 5036 of 2022
August 2, 2022
Between
CENTRAL BANK OF INDIA and others
and
DRAGENDRA SINGH JADON

Termination-Respondent, a bank employee was charged with appearing in the bank's exam in place of his brother-C.G.I.T. awarded reinstatement without backwages-Writ petition of appellant and respondent-workman were dismissed by High-Court-Respondent was reinstated w.e.f. his date of reporting-Writ petition filed by the respondent to reinstate the respondent from the date of award and the payment of arrears-He also claimed seniority and the current salary while considering his past service-Writ petition was allowed by learned Single Judge and also by Division Bench-hence, instant appeal by Bank-Held, termination of respondent found to be wrong by Tribunal and High Court-Tribunal rightly denied the backwages on the ground that he was earning in the intervening period-Prayer of respondent rightly allowed by High Court-Appeal dismissed.[Paras 18 to 23]

JUDGMENT

INDIRA BANERJEE J.- Leave granted.

2. This appeal is against a judgment and order dated 3rd April 2017 passed by the Division Bench of the High Court of Madhya Pradesh at Gwalior dismissing Writ Appeal No. 310 of 2015 filed by the Appellants against an order dated 7th August 2015, passed by the Single Bench, allowing the Writ Petition under Article 226 of the Constitution of India being Writ Petition No. 1571 of 2013 filed by the Respondent.

3. On or about 23rd April 1975, the Respondent was appointed to the post of Agricultural Assistant in the Appellant-Bank and posted at its Kailaras Branch in Madhya Pradesh.

4. Over four years after his appointment, the Respondent was served with a charge-sheet dated 18th September 1979 alleging that he had impersonated his brother in a Written Test conducted by the Bank through the Banking Service Recruitment Board, Lucknow on 6th May 1979 and answered the questions on his behalf. Pursuant to the charge-sheet, Disciplinary Enquiry was held after which the services of the Respondent were terminated by the Appellant-Bank by an order dated 29th January 1982.

5. The Respondent raised an industrial dispute. By Notification No. L- 12012/135/84-D.II(A) dated 7th April 1988, the Government of India, Ministry of Labour referred to the Central Government Industrial Tribunal- cum- Labour Court, hereinafter referred to as the ***"Tribunal"***, the dispute of *"Whether the action of the management of the Central Bank of India, Gwalior in dismissing from service Shri Dragendra Singh Jadon, Agricultural Assistant with effect from 29.01.1982 is justified? If no, to what relief is the workman entitled?"*

6. By an Award dated 10th September 2008, the Tribunal held that the Appellant-Bank was not able to prove the charge of impersonation against the Respondent and therefore, the dismissal was unjustified. The Tribunal, however, found that the Respondent had gainfully been employed throughout the interregnum period after termination, and, therefore, limited relief to reinstatement without back wages. The Appellants contend that there was no specific or general direction for continuity of service of the Respondent or consequential benefits.

7. On or about 12th July 2009, the Respondent filed a writ petition being Writ Petition No. 3091 of 2009(S) in the High Court of Madhya Pradesh at Gwalior, challenging the Award of the Tribunal insofar as the Respondent had been declined back wages. In the said Writ Petition, the Respondent sought the relief of modification of the Award dated 10th September 2008, by giving the Respondent the benefit of full back wages, continuity in service and other consequential benefits and such other relief as might be necessary for doing justice including costs.

8. The Appellants also filed a Writ Petition being Writ Petition No. 621 of 2009(S) against the Award dated 10th September 2008, insofar as the Respondent was directed to be reinstated in service. By a common judgment and order dated 8th May 2012, the High Court dismissed both the writ petitions. The Appellants states that, in compliance of the order dated 8th May 2012, the Appellant-Bank reinstated the Respondent with effect from his date of reporting i.e.

18th August 2012.

9. Sometime in March 2013, the Respondent moved a Writ Petition being Writ Petition No. 1571 of 2013 in the High Court of Madhya Pradesh at Gwalior, seeking orders on the Appellant-Bank to reinstate the Respondent to the post of Agricultural Finance Officer with notional fixation of pay upto 10th September 2008 i.e the date of the Award of the Tribunal and for payment of actual salary from 10th September 2008, being the date of the Award. The Respondent also prayed that the Appellant-Bank be directed to fix the seniority and the current salary of the Respondent, taking into consideration his past services.

10. The Appellant-Bank contested the Writ Petition and filed a reply, raising a preliminary objection to the maintainability of the Writ Petition on the ground of the Writ Petition being barred by principles of res judicata.

11. By a judgment and order dated 7th August 2015, the learned Single Judge of the High Court, allowed the Writ Petition. The Single Judge held :-

> "The Tribunal, upon reference made to it by the Central Government to adjudicate as to whether the respondents were justified in removing the petitioner from service, has answered the reference in negative and in favour of the petitioner-workman holding that petitioner was wrongly removed from service. Accordingly, the Tribunal ordered for reinstatement, but without back wages. Legal meaning attributed to word "reinstatement" is beyond any cavil of doubt as by catena of decisions of Hon'ble the Apex Court and various High Courts, word "reinstatement" has been unequivocally explained to the effect that once the Authority or Court orders for reinstatement of an employee, then the position of that employee is restored back to the date on which he was removed from services. As such, the respondents were not justified having excluded the period from the date of removal of the petitioner to the date of his reinstatement and treating the same as completely dies non and also in not allowing the petitioner to get the service benefits attributable to him by virtue of the aforesaid length of service. In the opinion of this Court, the order (Annexure P/1) passed by the Respondent-Bank is not in conformity with the order passed by the Tribunal. Hence, the impugned order, so far as it relates to denying benefits to the petitioner for the intervening period (the period from the date of removal of the petitioner from service to the date of his reinstatement), excepting denial of back wages is quashed and it is held that the petitioner shall be held entitled for all the benefits except back wages construing him to be in service from the date of removal till the date of actual reinstatement in service. Needless to mention that consequent upon the reinstatement, petitioner is entitled to regular salary from the date of Award subject to adjustment of the amount already paid under Section 17-B of the Industrial Disputes Act."

12. Mr. Debal Banerji, Senior Advocate, appearing on behalf of the Appellant- Bank rightly argued that the principles of res judicata apply to writ proceedings under Articles 226 and 227 of the Constitution of India. There can be no dispute with the proposition. It is also true that the learned Single Judge of the High Court has not specifically dealt with the issue of res judicata raised by the Appellant-Bank.

13. Where an objection to the maintainability of any application/suit on an issue of law is not expressly dealt with, but the application/suit is entertained and disposed of on merits, the objection is deemed to have been rejected. The mere fact that an issue may not specifically have been dealt with, or reasons not specifically disclosed for decision on that issue, would not vitiate a judgment and order, that is otherwise correct.

14. It is not correct to say that the Respondent obtained the order of this Court by suppressing the fact that an earlier Writ Petition moved by the Respondent had been dismissed. In Paragraph 5.5 of the Writ Petition, the Respondent clearly stated that both the parties had challenged the Award of the Tribunal before the High Court - the Management of the Appellant-Bank against the entire Award and the Respondent against the part of the Award refusing back wages. Both the Writ Petitions i.e. W.P. No. 621 of 2009(S) filed by the Respondent and W.P. No. 3091 of 2009(S) filed by the Appellants were heard analogously and dismissed by a common order dated 8th May 2012. The Respondent not only mentioned the fact that he had initiated a Writ Petition earlier, but also annexed a copy of the common judgment and order of the High Court in the earlier Writ Petitions as Annexure P-4.

15. Even though, the Court may not have specifically dealt with the issue of res judicata raised by the Appellant-Bank as a preliminary

issue, it is clear from the judgment and order of the Single Bench as also the impugned judgment and order of the Division Bench, that the second writ petition was not barred by the principles of res judicata or analogous principles.

16. The principles of res judicata are attracted where the matter in issue in the later proceedings have directly and substantially been in issue in earlier proceedings, between the same parties, in a competent forum having jurisdiction. Res judicata debars the Court from exercising jurisdiction to determine the lis, if it has attained finality between the parties. There is a distinction between res judicata and issue estoppel. In the case of issue estoppel, a party against whom an issue has been decided would be estopped from raising the same issue again.

17. Where an issue could have been raised in earlier proceedings, but has not been raised, the principle of constructive res judicata would be attracted to deny relief, for it is not the policy of law that multiple proceedings should be initiated in Court in relation to the same cause of action. Where the cause of action for initiation of proceedings is a distinctive cause of action, the principles of res judicata would not apply.

18. What was in issue in the earlier writ petition being Writ Petition No. 3091 of 2009(S) was the legality of the Award and other consequential benefits. The cause of action for Writ Petition No. 1571 of 2013 arose subsequently. The issue in the later writ petition was not whether the Respondent was entitled to back wages for the period prior to the date of the Award, which issue had been decided in the earlier writ petition, but the issue of fixation of pay and seniority upon reinstatement in service. The question in the second writ petition was, whether, for the purposes of seniority and fixation of pay, the Respondent was to be treated as a newly appointed employee and that too with effect from 18th August 2012, when the Award directing his reinstatement was dated 10th September 2008.

19. In our considered view, the learned Single Bench of the High Court rightly granted relief to the Respondent. By the impugned judgment and order, the Division Bench of the High Court dismissed the Appeal of the Appellants and directed that the Respondent would have to be treated in service from the date of removal till the date of actual reinstatement in service and would accordingly be entitled to seniority and the right to be considered for promotion, but would not be entitled to back wages.

20. We find no infirmity with the concurrent findings of the Single Bench and the Division Bench of the High Court. There is a difference between reappointment and reinstatement. Reinstatement means to return a person or thing to its previous position or status. An order of reinstatement puts a person back to the same position.

21. The Tribunal had granted the Respondent, the relief of reinstatement. Considering that the Respondent had not actually rendered service to the Appellant-Bank and that he had been earning in the intervening period, the Tribunal denied him back wages. The Tribunal and the High Court (both the Single Bench and the Division Bench) have in effect and substance found the termination of service of the Respondent to be wrongful.

22. The Appellant-Bank cannot take advantage of its own wrong of wrongfully dismissing the Respondent from service, to deny him the benefit of seniority, promotion and other benefits to which he would have been entitled, if he had attended to his duties.

23. The appeal is, accordingly, dismissed.■

Appeal Dismissed.

2022-IV-LLJ-391 (Bom)
LNIND 2022 BOM 414
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Present:
Hon'ble Mr. Chief Justice Dipankar Datta and
Hon'ble Mr. Justice M.S.Karnik
W.P.No. 1508 of 2021
23rd August, 2022

Sameedha Suhas Deshpande .....Petitioner
Versus
Chairman Shri Dinesh Kumar Khara and Others ....Respondents

Pension-Counting of Probationary Service Period-Petitioner challenged action of Respondent 4 bank in refusing her pension, by excluding probationary period of service rendered by her, and directing Respondent to sanction pensionary benefits along with interest at rate of 18% hence this Petition-

Whether, period of probationary service rendered by Petitioner would count for qualifying service to receive pension-Held, although probationers considered to be substantively appointed in service only upon confirmation and thereby secures status and right to post, for counting his length of service, all incidents of such status immediately attracted-In determining seniority, period of service rendered by probationer would not be ignored-No Rules governing terms and conditions of service of Petitioner that for purpose of counting seniority or her length of service or for determination of qualifying service for entitlement to pension, period of probationary service was required to be excluded-Action of Respondent 4 bank in depriving Petitioner of pension to be wholly illegal and arbitrary –Impugned communications, by which Petitioner was informed of her disentitlement to pension, stand quashed-Respondent 4 and its officers directed to make available requisite quantum of pension, both arrears and current, in accordance with law as early as possible-Arrears shall be paid together with interest at rate of 6% per annum-Petition allowed.

ORAL JUDGMENT

Mr. DIPANKAR DATTA, C.J.

Whether or not the period of probationary service rendered by the petitioner would count for qualifying service to receive pension, is the question that has engaged our consideration while hearing this writ petition.

2. Filtering out unnecessary facts, we find that the petitioner was appointed by the Branch Manager, State Bank of India (SBI), respondent no. 4 as Cashier-cum-Clerk in the pay-scale of ? 520- ? 1,660 on 23rd October 1985 subject to the 8 (eight) conditions mentioned therein. While condition no. (i) required the petitioner to be on probation for a period of 6 (six) months, which could be extended at the absolute discretion of the Bank by 3 (three) months, condition no. (v) stipulated that the petitioner would be considered for confirmation of service if, at the end of the probationary period, she was found to the satisfaction of the Bank, to be deserving of such confirmation in service. After satisfactory discharge of service during the probationary period, the petitioner was confirmed by an order dated 23rd April 1986 of the respondent no.4.

3. The SBI Voluntary Retirement Scheme (SBIVRS) dated 30th December 2000 was introduced conveying to the eligible permanent employees of the bank that those who have put in 15 (fifteen) years of service or have completed 40 (forty) years of age as on 31st December 2000 would be eligible to apply for voluntary retirement thereunder. In pursuance of the SBIVRS, the petitioner put in an application dated 15th January 2001. In such application, she duly mentioned her dates of appointment and confirmation. Insofar as length of service as on 31st December 2001 is concerned, she indicated that she was in service for ***"15 years, 2 months".*** Together with such application for voluntary retirement, the petitioner, by separate writings (all dated 15th January 2001), inter alia, prayed that monthly pension be permitted to be drawn from SBI, Parel Branch Circle, Mumbai and to commute 1/3rd of pension as well as to pay her gratuity and to allow encashment of her privilege leave. These writings also indicated that the prayers are being made assuming that SBI would accede to her request for voluntary retirement.

4. SBI found the application of the petitioner to be in order. This resulted in issuance of an order dated 14th March 2001 of the respondent no.4 to the following effect: -

> "Your request for retirement under the Scheme has been accepted and you will be relieved of your duties at the close of the business on 31st March 2001."

The petitioner, therefore, demitted office on 31st March 2001.

5. It is important to note that while applying for voluntary retirement the petitioner had included the period spent on probation within the aforesaid period of "15 years, 2 months", being her length of service. Had such period not been included, the period of service counted from the date of confirmation would have fallen short of 15 (fifteen) years and the petitioner would have been regarded ineligible for voluntary retirement. Once the application for voluntary retirement was granted, it stood to reason that the petitioner had qualified therefor and that SBI not having raised any objection to inclusion of the probationary period of service within the total length of service, it must be held to be estopped to raise any contra contention.

6. Be that as it may, the question as to whether the employees of SBI who had retired voluntarily were entitled to pension on rendering

service in excess of 15 (fifteen) years as per the SBIVRS was looked into by the Supreme Court in Assistant General Manager, State Bank of India and Others. v. Radhey Shyam Pandey. LNIND 2020 SC 167 : (2020) 6 SCC 438. The concluding paragraph of the decision reads as follows: -

> "64. Resultantly, we are of the opinion that the employees who completed 15 years of service or more as on cut-off date were entitled to proportionate pension under SBI VRS to be computed as per SBI Pension Fund Rules. Let the benefits be extended to all such similar employees retired under VRS on completion of 15 years of service without requiring them to rush to the court. However, considering the facts and circumstances, it would not be appropriate to burden the bank with interest. Let order be complied with and arrears be paid within three months, failing which amount to carry interest at the rate of 6 per cent per annum from the date of this order. The appeals are accordingly disposed of. No costs."

7. Having regard to the aforesaid decision of the Supreme Court, SBI on its own invited the retirees to apply for pensionary benefits. The petitioner applied on 28th April 2020 seeking pension. Such application was, however, returned by the competent authority of SBI with a comment that the petitioner is not eligible for pension as she had not completed 15 (fifteen) years of pensionable service. Faced with rejection of her application for pension, the petitioner approached the Chairman of SBI with a representation dated 5th August 2020. Reference was made to the decision in Assistant General Manager, State Bank of India and Others v. Radhey Shyam Pandey (supra). It was contended by the petitioner that she was entitled to pension having completed 15 years of service and that SBI was not justified in interpreting the order of the Supreme Court in its own way to deprive the petitioner of the benefits of such decision. Having submitted such representation, the petitioner was greeted with a communication that in counting 15 (fifteen) years of service, only the service rendered upon confirmation is regarded as eligible service for pension and that the petitioner's confirmed service being less than 15 (fifteen) years, she was ineligible for pension. A legal notice followed sent by the petitioner's solicitor, to which the bank responded by an email dated 10th February 2021 as follows: -

> "We are in receipt of your mail dated 04.02.2021, Ms Sameedha Deshpande has not completed 15 years of confirmed service with the Bank. As per the Hon'ble Supreme Court order, (Civil Appeal No 2463 OF 2015 - Assistant General Manager and Others. v. Radhey Shyam Pandey), she is not entitled to Pension, since she has not completed 15 years of confirmed service.

Even though Hon'ble Supreme Court has not distinguished between Confirmed Service and Pensionable Service, the interpretation taken is 15 years Pensionable Service and not confirmed service.
Please also refer to our earlier mail sent to Ms Sameedha Deshpande on 21.08.2020 in this regard.

Hence, we have to advise that Ms Sameedha Deshpande is not entitled to pension, since she has not completed 15 years of confirmed service."

8. Aggrieved by the action of SBI in refusing her pension, basically by excluding the probationary period of service rendered by her, the petitioner invoked the writ jurisdiction of this Court on 5th April 2021 seeking relief as follows: -

(A) The Hon'ble Court be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, quashing and setting aside the impugned decision dated 10-02-2021, at Annexure-A to the petition, of the respondent, and the respondent authority may be directed to sanction the proposal of pension to the petitioner;

(B) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus commanding direction to the Respondent to sanction/release the pensionary benefits along with interest at the rate of 18% (Compounded Annually) on the belated payment and Order for Mesne profit to compensate for the years of injustice and suffering to the petitioner having taken voluntary retirement under "SBIVRS" in 2001."

9. Appearing in support of the writ petition, Mr. Bajaj, learned advocate contends that illegality and arbitrariness in the action of SBI in depriving the petitioner of pension in terms of the decision in

Assistant General Manager, State Bank of India and Others v. Radhey Shyam Pandey (supra) is writ large. According to him, the Supreme Court did not say that while calculating 15 (fifteen) years of qualifying service, the period spent on probation should be excluded. In such view of the matter, it was not open to SBI to interpret the order of the Supreme Court to the disadvantage of the petitioner.

10. Next, Mr. Bajaj places reliance on the decision of a coordinate Bench of this Court dated 5th October 2018 in Rugmini Ganesh v. State Bank of India LNIND 2018 BOM 591, Writ Petition No. 1873 of 2017. In such decision, the Bench took into consideration the initial date of joining of the petitioner on 1st September 1980 and having regard to the fact that she had voluntarily retired from service from 31st March 2001, it was held that she had completed more than 20 (twenty) years of service and after excluding the period of leave, the petitioner would still fulfill the requirement of qualifying service of 20 (twenty) years. Accordingly, while allowing the writ petition, SBI was directed to pay pension to the petitioner calculated from the date of retirement, i.e., 31st March 2001. Arrears of pension within 12 weeks and current pension, month by month, as per Rules were directed to be paid.

11. Mr. Bajaj, thereafter, places reliance on the judgment and order dated 21st September 2018 passed by another coordinate Bench of this Court (Bench at Nagpur) in Smt. Vandana w/o Eknath Bhondwe v. State Bank of India and Another LNIND 2018 NGP 424, Writ Petition No.2348 of 2017. It was urged that the Nagpur Bench too granted benefit of pension to the petitioner. The said writ petition arose out of refusal of the erstwhile State Bank of Bikaner and Jaipur to consider the petitioner as having completed 15 (fifteen) years of service towards eligibility for pension. After hearing the parties, the Court answered both the questions in favour of the petitioner and held that the petitioner would be entitled to pension under the relevant scheme.

12. Mr. Bajaj, accordingly, prays that relief as claimed by the petitioner may be granted by directing SBI to release sums due to the petitioner on account of arrears of pension as well as to pay current pension month by month, with interest.

13. The writ petition has been opposed by Mr. Joshi, learned advocate for SBI. He has drawn our attention to the State Bank of India Employees' Pension Fund Rules and more particularly to rule 7 reading as follows: -

"7. Save as provided in rule 8, every permanent employee (including a permanent part-time employee who is required by the Bank to work for more than six hours a week) in the service of the Bank who is entitled to pension benefits under the terms and conditions of his service shall become a member of the Fund from -

(a) the date from which he is confirmed in the service of the Bank, or

(b) the date from which he may be required to become a member of the Fund under the terms and conditions of his service."

14. It is Mr. Joshi's contention that in view of clause (a) of rule 7, period of qualifying service has to be reckoned from the date of confirmation of service of the member of the pension fund. According to him, by excluding the period of probationary service of the petitioner, SBI did not commit any illegality or arbitrariness as urged by Mr. Bajaj.

15. Insofar as the decision in Rugmini Ganesh v.State Bank of India (supra) is concerned, Mr. Joshi contends that the same has been carried in appeal to the Supreme Court in Special Leave Petition (C) No. 2003 of 2019 and that such petition is pending. He also submits that the petition for special leave to appeal (civil) against the decision in Smt. Vandana w/o Eknath Bhondwe v. State Bank of India and Another (supra) is pending too before the Supreme Court being Special Leave Petition (C) No. 1835 of 2019. In his usual fairness, however, Mr. Joshi has brought to our notice that in both the special leave petitions, prayers for interim relief were not pressed.

16. Relying on rule 7 of the Pension Fund Rules, Mr. Joshi submits that the petitioner has not been subjected to any legal wrong for which interference on this writ petition ought to be warranted.

17. We have heard Mr. Bajaj and Mr. Joshi, and considered the decisions cited at the bar.

18. Reliance placed by Mr. Joshi on rule 7(a) is misplaced. Rule 7(a) points to the date on and from which a permanent employee of SBI could become a member of the pension fund. The indication

cannot be missed that unless confirmed in service and without acquiring the status of a permanent employee, any employee of SBI cannot become a member of the pension fund. It is, therefore, clear as crystal that the date on which a permanent employee becomes a member of the pension fund has no rational nexus with regard to eligibility for pension qua the length of service rendered by such employee for SBI, if he/she is entitled therefor in terms of his/her terms and conditions of service. We, thus, see no reason to accept Mr. Joshi's contention.

19. Further, the petitioner is right in contending that the Supreme Court in Assistant General Manager, State Bank of India and Others v. Radhey Shyam Pandey (supra) did not make any distinction that, for the purpose of entitlement to pension, the period of probationary service has to be excluded. In fact, we have searched in vain for any logic behind such exclusion. Having accepted the decision in Assistant General Manager, State Bank of India and Others v. Radhey Shyam Pandey (supra) and in the light of the fact aforementioned that the petitioner was allowed to retire on her completion of 15 (fifteen) years of service, which included the period of service spent on probation, SBI has failed to act fairly, reasonably and rationally.

20. We also consider it necessary to indicate the flaw in the decision-making process adopted by SBI in refusing pension to the petitioner. Law is well settled that the whole concept of probation is to judge the suitability of a candidate appointed to a particular post. Profitable reference can be made to the decision of the Supreme Court in Sunaina Sharma and Others. v. State of Jammu and Kashmir and Others. LNIND 2017 SC 2866: (2018) 11 SCC 413. We may also quote an enlightening passage from the decision in Ajit Singh and Others. v. State of Punjab 1983-I-LLJ-410: LNIND 1983 SC 81 : AIR 1983 SC 494 : (1983) 2 SCC 217 on why an employee is placed under probation. The same reads as follows: -

> "7. When the master-servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master- servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus pententiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to (see Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36). The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer."
>
> ***(Emphasis supplied)***

21. Although it is true that a probationer is considered to be substantively appointed in service only upon confirmation and thereby secures a status as well as a right to the post, for counting his length of service, all incidents of such status are immediately attracted. In determining seniority, the period of service rendered by the probationer will generally not be ignored as held

in S. D. Patwardhan v. State of Maharashtra LNIND 1977 SC 208: AIR 1977 SC 2051 : (1977) 3 SCC 399. In other fields, the question would ultimately depend on the provisions of the Rules. We have not been shown from any of the Rules governing the terms and conditions of service of the petitioner that either for the purpose of counting seniority or her length of service or for determination of qualifying service for entitlement to pension, the period of probationary service was required to be excluded.

22. Having regard to the same and also in view of the decision in Assistant General Manager, State Bank of India and Others v. Radhey Shyam Pandey (supra), we hold the action of SBI in depriving the petitioner of pension to be wholly illegal and thoroughly arbitrary. The impugned communications, by which the petitioner was informed of her disentitlement to pension, stand quashed.

23. We direct SBI and its officers who are respondents before us to make available requisite quantum of pension, both, arrears and current, in accordance with law as early as possible. The arrears shall be released not later than 12 (twelve) weeks of uploading of this order on the website of this Court. Needless to observe that current pension shall be paid to the petitioner month by month, the first instalment of which should reach the petitioner by 7th September 2022.

24. Insofar as the arrears are concerned, the same shall be paid together with interest at the rate of 6% per annum.

25. Since the Supreme Court in Assistant General Manager, State Bank of India and Others v. Radhey Shyam Pandey (supra) intended that all other retirees ought not to rush to the Court and that SBI, as a model employer, ought to provide pensionary benefits to the employees, but the petitioner in the present case has been unnecessarily driven to the Court for securing her pensionary benefits, we saddle SBI with costs of ₹25,000/- (twenty-five thousand only). Such amount shall also be paid to the petitioner as early as possible, but within 12 (twelve) weeks as aforesaid.

26. The writ petition is allowed on the aforesaid terms.■

Petition allowed.

[2022 (175) FLR 371]
(SUPREME COURT)
Dr. DHANAJAYA Y. CHANDRACHUD and A.S.BOPANNA,JJ.
Civil Appeal No. 5305 of 2022
August 16, 2022
Between
STATE BANK OF INDIA and another
and
AJAY KUMAR SOOD

Misconduct-Penalty of dismissal-Appeal was rejected-Central government Industrial Tribunal (CGIT) initiated the enquiry proceeding as there was violation of principles of natural justice-Bank was however allowed to lead evidence to justify the charges-CGIT modified the punishment to compulsory retirement-High Court affirmed the order of CGIT-High Court directed the Tribunal to compute the consequential benefits-Hence instant appeal-Held the judgment of Himachal Pradesh High Court found to be a maze of incomprehensible language-Leaving no option than to remand the proceeding-High Court must appreciate the delay and expense occasioned as a consequence and must make an effort to record reasons which are understood by all stake holders-Judgment of High Court set aside-Matter remanded back-High Court to expedite the disposal of writ petition as a considerable period had already been spent-Appeal allowed. [Paras 16 to 32]

JUDGMENT

Dr DHANANJAYA Y CHANDRACHUD, J- Leave granted.

2. This appeal arises from a judgment dated 27 November 2020 of a Division Bench of the High Court of Himachal Pradesh. The High Court affirmed the order of the Central Government Industrial Tribunal dated 09 July 2019.

3. In 2013, the appellant issued a charge-sheet to the respondent in a disciplinary enquiry on a charge of gross misconduct. The respondent was charged with (i) gross misconduct including disrupting the functioning of the branch of the bank and misbehavior

with the branch manager; (ii) use of abusive language and threatening the branch manager; (iii) organizing demonstrations without prior notice; (iv) disrupting smooth functioning by preventing other employees from carrying out their functions; (v) deliberately flouting systems and procedures with the intention to undermine the branch manager's authority and increasing the operational risk of the branch; (vi) unauthorized absence from duty; (vii) disobedience of office orders; (viii) proceeding on medical leave without providing relevant medical certificates; and (ix) issuance of cheques from a bank account which did not have sufficient balance. The enquiry officer submitted an enquiry report dated 19 October 2013 finding the respondent guilty of all the charges.

4. The disciplinary authority issued a show-cause notice to the respondent on 22 October 2013 to explain why he should not be dismissed from service in view of the findings of the enquiry officer. The respondent sought an extension of 15 days. The disciplinary authority noted that it had granted an extension of 5 days but not having received any response, it imposed the penalty of dismissal from service by its order dated 06 November 2013. The appellate authority of the bank rejected the respondent's appeal on 03 January 2014.

5. The respondent raised an industrial dispute under the Industrial Disputes Act 1947 to challenge his termination before the CGIT. The enquiry proceedings and report were held to be vitiated as they were found to be in violation of the principles of natural justice by the Tribunal's order dated 25 September 2018. However, the bank was allowed to lead evidence to justify the charges against the respondent.

6. Based on the evidence led before the Tribunal on the charge of misconduct, the CGIT by its order dated 09 July 2019 came to the conclusion that the first charge against the respondent was proved. The CGIT found the penalty of dismissal to be harsh and disproportionate and modified the punishment to compulsory retirement.

7. The appellant as well as the respondent instituted writ petitions before the High Court of Himachal Pradesh to challenge the order of the CGIT. The High Court affirmed the order of the CGIT. The High Court also directed the Tribunal to compute the consequential

benefits conferred upon the respondent. The High Court directed the Tribunal to pass an order in accordance with Section 10(9) and Section 10(10) of the Industrial Disputes Act 1947.

8. On 12 March 2021, this Court issued notice against the impugned judgment of the Division Bench of the High Court while entertaining the Special Leave Petition under Article 136 of the Constitution. This court observed :

> "3. Prima facie, in our view, a serious act of misconduct stands established from the evidentiary findings contained in paragraphs 16 and 17 of the award of the CGIT (Annexure P-9). We are inclined to issue notice for this reason and for an additional reason as well.
>
> The reasons set out in the judgment of the Division Bench of the High Court dated 27 November 2020 dismissing the petition filed by the petitioners under Article 226 of the Constitution, span over eighteen pages but are incomprehensible. For this purpose, it is necessary to extract paragraphs 3,4,5 and 6 of the judgment of the High Court, which read as follows:
>
> "3. All the afore infirmities noticed in the impugned award, to, occur, in, Annexure P-18, remain neither contested nor any endeavor, is made by the learned Counsel, appearing for the employer to scuttle all the legal effects thereof. Consequently, the afore apposite noticed infirmities, as, echoed in the impugned award, to occur in Annexure P-18, and, appertaining, to, affirmative conclusion(s), being made qua the workman, vis-à-vis, the apposite thereto charges drawn against him, do, necessarily acquire overwhelming legal weight, and, also enjoin theirs being revered.

4. Be that as it may, since the impugned award, is made, in pursuance to a petition filed, before the learned Tribunal, by the Workman, under Section 2-A, of the Industrial Disputes Act 1947, and, when after affording, the, fullest adequate opportunities, to the contesting litigants, to adduce their respective evidence(s), on the issues, falling for consideration, the learned Tribunal proceeded to make the impugned award, (i) thereupon the effect, if any, or the legal effect, of, Annexure P-18, inasmuch as, it containing evidence, in support of the conclusion(s), borne therein, does, emphatically, become(s)

subsumed, within the canvas, and, contours, of, the evidence adduced, respectively, by the workman, and, by the employer, before the learned Tribunal, (ii) unless evidence emerged through the witnesses', who testified before the learned Tribunal, and, upon theirs being confronted with their statement(s), previously made before the Inquiry Officer, and, its making unearthing(s), vis-à-vis, hence no credibility, being assigned, vis-à-vis, theirs respective testification(s), made before the learned Tribunal. However, a perusal, of, evidence, adduced before the learned Tribunal, both by the Workman, and, the employer, unveils, (iii) that the afore evidence, became testified, by all the witnesses concerned, rather with the fullest opportunity, being afforded to the Counsel, for the workman, and, to the Counsel for the employer, (iv) and, also unveils that the Counsel, for, the employer, rather omitting to, during the process, of, his conducting their cross-examination, hence confront them, with their previous statement, recorded before the Inquiry Officer, for therethrough(s), his obviously attempting to, hence impeach their respective credibility(ies). In summa, hence the evidence adduced before the Tribunal concerned, alone enjoins its, if deemed fit, being appraised by this Court.

5. The learned Tribunal, had, upon consideration, of evidence adduced, vis-à-vis, charges No. 2, 3, 4, 5, 6, 7, 8 and 9, hence concluded, qua theirs, not therethrough, becoming proven, rather it made a conclusion, vis-à-vis, their being lack, of, cogent evidence, or their being want, of, adduction, of, cogent evidence, qua therewith, by the employer, and, obviously, returned thereon(s) finding(s), adversarial, to the employer. Consequently, hence the appraisal, of, evidence, adduced by the department/employer, vis-à-vis, the afore charges, does not, merit any interference, as reading(s) thereof, obviously, unfold qua the appraisal, of, evidence, adduced, vis-à-vis, the afore drawn charges, hence by the learned Tribunal, hence not, suffering from any gross mis-appraisal thereof, nor from any stain, of, non-appraisal, of, germane evidence, hence adduced qua therewith, by the department/employer.

6. The ire res-controversia, erupting inter se the litigants, appertains, to findings, adversarial, to the workman, becoming returned upon charge No. 1. Though the learned Counsel appearing for the workman, contends with much vigor, before this Court, that since the CCTV footage, does not vividly pronounce, qua the workman, tearing the apposite letter, thereupon findings, adversarial, to the

workman, were not amenable, to be returned upon charge No. 1(supra). However, the afore made submission, before this Court, by the learned Counsel for the workman, is, made without his bearing in mind, the further facet, vis-à- vis, the workman, in his cross-examination, making articulation(s), coined in the phraseology, ***"No Branch Manager has dared to issue me letter prior to this"***. In addition, with the Workman, despite his coming into possession, of, the apposite letter, issued to him, by the Branch Manger, especially when no evidence, contra therewith, became adduced, by him, hence became enjoined, to dispel the factum, of, his not tearing it, rather ensure its production, before the Officer concerned. However, he failed to adduce/produce the afore letter before the Officer concerned, thereupon, de hors the CCTV footage, not graphically displaying his tearing the apposite letter, rather not cementing or filliping any conclusion, vis- à-vis, perse therefrom, any exculpatory finding, becoming amenable to be returned upon charge No. 1."

5 We are constrained to observe that the language in the judgment of the High Court is incomprehensible. Judgments are intended to convey the reasoning and process of thought which leads to the final conclusion of the adjudicating forum. The purpose of writing a judgment is to communicate the basis of the decision not only to the members of the Bar, who appear in the case and to others to whom it serves as a precedent but above all, to provide meaning to citizens who approach Courts for pursuing their remedies under the law. Such orders of the High Court as in the present case do disservice to the cause of ensuring accessible and understandable justice to citizens.

6 Since the High Court has affirmed the award of the CGIT, we have been able to arrive at an understanding of the basic facts from the order which was challenged before the High Court. From the record of the Court, more particularly the award of the CGIT, it emerges that though a serious charge of misconduct was held to be established against the respondent, it has been interfered with and the High Court has dismissed the petition under Article 226."

9. Following the return of notice, we have heard Mr Sanjay Kapur, Counsel for the appellant and Mr Colin Gonsalves, senior Counsel for the respondent.

10. The judgment of the Division Bench of the High Court of Himachal

Pradesh is incomprehensible. This Court in appeal found it difficult to navigate through the maze of incomprehensible language in the decision of the High Court. A litigant for whom the judgment is primarily meant would be placed in an even more difficult position. Untrained in the law, the litigant is confronted with language which is not heard, written or spoken in contemporary expression. Language of the kind in a judgment defeats the purpose of judicial writing. Judgment writing of the genre before us in appeal detracts from the efficacy of the judicial process. The purpose of judicial writing is not to confuse or confound the reader behind the veneer of complex language. The Judge must write to provide an easy-to-understand analysis of the issues of law and fact which arise for decision. Judgments are primarily meant for those whose cases are decided by judges. Judgments of the High Courts and the Supreme Court also serve as precedents to guide future benches. A judgment must make sense to those whose lives and affairs are affected by the outcome of the case. While a judgment is read by those as well who have training in the law, they do not represent the entire universe of discourse. Confidence in the judicial process is predicated on the trust which its written word generates. If the meaning of the written word is lost in language, the ability of the adjudicator to retain the trust of the reader is severely eroded.

11. We are constrained to remit the proceedings back to the High Court for consideration afresh. The judgment of the High Court is simply incomprehensible leaving this Court with no option than to remand the proceedings. The High Court must appreciate the delay and expense occasioned as a consequence and must make an effort to record reasons which are understood by all stake-holders.

12. Earlier too, in State of Himachal Pradesh v. Himachal Aluminium and Conductors, Sarla Sood v. Pawan Kumar Sharma, this Court had to remand the proceedings arising out of similar judgments of the High Court of Himachal Pradesh, so that orders could be passed afresh in language which is capable of being understood. In Shakuntala Shukla v. State of Uttar Pradesh as well, a two Judge Bench of this Court, was faced with an order of the High Court of Judicature at Allahabad which made it difficult to discern between the submissions of Counsel and the reasons of the Court. Laying emphasis on the purpose of a judgment, this Court elaborated on what should be the content of a judgment. The court observed that:

33. […] "Judgment" means a judicial opinion which tells the story of the case; what the case is about; how the Court is resolving the case and why. *"Judgment"* is defined as any decision given by a Court on a question or questions or issue between the parties to a proceeding properly before Court. It is also defined as the decision or the sentence of a Court in a legal proceeding along with the reasoning of a Judge which leads him to his decision. The term *"judgment"* is loosely used as judicial opinion or decision. Roslyn Atkinson, J., Supreme Court of Queensland, in her speech once stated that there are four purposes for any judgment that is written:

i) to spell out Judges own thoughts;
ii) to explain your decision to the parties;
iii) to communicate the reasons for the decision to the public; and
iv) to provide reasons for an appeal Court to consider

34. It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. [….] What the Court says, and how it says it, is equally important as what the Court decides.

35. Every judgment contains four basic elements and they are (i) statement of material (relevant) facts, (ii) legal issues or questions, (iii) deliberation to reach at decision and (iv) the ratio or conclusive decision. A judgment should be coherent, systematic and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles. It is pertinent to examine the important elements in a judgment in order to fully understand the art of reading a judgment. In the Path of Law, Holmes J. has stressed the insentient factors that persuade a judge. A judgment has to formulate findings of fact, it has to decide what the relevant principles of law are, and it has to apply those legal principles to the facts. The important elements of a judgment are:

i) Caption
ii) Case number and citation
iii) Facts
iv) Issues
v) Summary of arguments by both the parties
vi) Application of law
vii) Final conclusive verdict

36. The judgment replicates the individuality of the judge and

therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skillful application of law and logic. We are conscious of the fact that the Judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never be sacrificed for quantity. Unless judgment is not in a precise manner, it would not have a sweeping impact. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the litigation must know what actually he has got by way of final relief. The aforesaid aspects are to be borne in mind while writing the judgment, which would reduce the burden of the appellate Court too. We have come across many judgments which lack clarity on facts, reasoning and the findings and many a times it is very difficult to appreciate what the learned Judge wants to convey through the judgment and because of that, matters are required to be remanded for fresh consideration. Therefore, it is desirable that the judgment should have a clarity, both on facts and law and on submissions, findings reasonings and the ultimate relief granted.

(emphasis supplied)

13. Amidst an overburdened judicial docket, a view is sometimes voiced that parties are concerned with the outcome and little else. This view proceeds on the basis that parties value the outcome and not the reasoning which constitutes the foundation. This view undervalues the importance of the judicial function and of the reasons which are critical to it. The work of a Judge cannot be reduced to a statistic about the disposal of a case. Every judgment is an incremental step towards consolidation and change. In adhering to precedent, the judgment reflects a commitment to protecting legal principle. This imparts certainty to the law. Each judgment is hence a brick in the consolidation of the fundamental precepts on which a legal order is based. But in incremental steps a judgment addresses the need to evolve and to transform by addressing critical issues which confront human existence. Courts are as much engaged in

the slow yet not so silent process of bringing about a social transformation. How good or deficient they are in that quest is tested by the quality of the reasons as much as by the manner in which the judicial process is structured.

14. Lord Burrows of the Supreme Court of the United Kingdom, in his speech at the Annual Conference of Judges of the Superior Courts in Ireland stressed upon the importance of clarity, coherence and conciseness in judgment writing. Lord Burrows also noted the importance of the judgment being written in a manner that it is accessible to all considering its wide and varied potential audience. He noted:

For senior Judges, one's target audience must include the parties themselves, the legal advisers to those parties, other Judges, other practising lawyers, academic lawyers and students, and last but by no means least the public at large.

Lord Burrows also reiterates the view of Lord Bingham, that a judgment which is unclear or not concise and therefore inaccessible may contradict the rule of law:

> "(T)here is the view that a judgment that is unclear or not concise and therefore inaccessible may contradict the rule of law. The great Lord Bingham – a master of judgment-writing if ever there was one – suggested this in his book, The Rule of Law. Having laid down as his first concretised element of the rule of law that the law must be accessible? he went on as follows:
>
> 'The Judges are quite ready to criticise the obscurity and complexity of legislation. But those who live in glass houses are ill-advised to throw stones. The length, elaboration and prolixity of some common law judgments can in themselves have the effect of making the law to some extent inaccessible……..?

15. In a piece of academic writing, Justice Daphne Barak-Erez of the Supreme Court of Israel distinguished between academic writing and judgment writing. While alluding to the importance of judgments being written in an accessible manner, Justice Daphne Barak-Erez notes:

For Judges, the professional community is only one of their several audiences. Judges write first and foremost for the parties appearing before them, for the state's agents who are in charge of enforcement, and for the public. Although judgments are professional legal documents, and sometimes involve complex technical and legal analyses, they should also be accessible, or at least explicable, to people who are not professionals, as they define the law for a larger community.

16. A judgment culminates in a conclusion. But its content represents the basis for the conclusion. A judgment is hence a manifestation of reason. The reasons provide the basis of the view which the decision maker has espoused, of the balances which have been drawn. That is why reasons are crucial to the legitimacy of a Judge's work. They provide an insight into judicial analysis, explaining to the reader why what is written has been written. The reasons, as much as the final conclusion, are open to scrutiny. A judgment is written primarily for the parties in a forensic contest. The scrutiny is first and foremost by the person for whom the decision is meant - the conflicting parties before the Court. At a secondary level, reasons furnish the basis for challenging a judicial outcome in a higher forum. The validity of the decision is tested by the underlying content and reasons. But there is more. Equally significant is the fact that a judgment speaks to the present and to the future. Judicial outcomes taken singularly or in combination have an impact upon human lives. Hence, a judgment is amenable to wider critique and scrutiny, going beyond the immediate contest in a courtroom. Citizens, researchers and journalists continuously evaluate the work of Courts as public institutions committed to governance under law. Judgment writing is hence a critical instrument in fostering the rule of law and in curbing rule by the law.

17. Judgment writing is a layered exercise. In one layer, a judgment addresses the concerns and arguments of parties to a forensic contest. In another layer, a judgment addresses stake-holders beyond the conflict. It speaks to those in society who are impacted by the discourse. In the layered formulation of analysis, a judgment speaks to the present and to the future. Whether or not the writer of a judgment envisions it, the written product remains for the future, representing another incremental step in societal dialogue. If a judgment does not measure up, it can be critiqued and criticized. Behind the layers of reason is the vision of the adjudicator over the

values which a just society must embody and defend. In a constitutional framework, these values have to be grounded in the Constitution. The reasons which a Judge furnishes provides a window - an insight - into the work of the Court in espousing these values as an integral element of the judicial function.

18. Many judgments do decide complex questions of law and of fact. Brevity is an unwitting victim of an overburdened judiciary. It is also becoming a victim of the cut- copy-paste convenience afforded by software developers. This Court has been providing headings and sub-headings to assist the reader in providing a structured sequence. Introduced and popularized in judgment writing by Lord Denning, this development has been replicated across jurisdictions.

19. Lord Neuberger, the former President of the Supreme Court of the United Kingdom, discussed in the course of a lecture the importance of clearly written judgments:

A second small change worth considering would be for more Judges to give better guidance to the structure and contents of their longer Judgments. Some Judges already provide a clear framework, sometimes with a table of contents, a roadmap, at the beginning, and often with appropriate headings, signposts, throughout the Judgment. Kimble's study confirms that this is not just a good discipline but it is what the legal professional readers want, and, if it is what lawyers want, it is a fortiori what non- lawyers will want. A clear structure aids accessibility.

20. It is also useful for all judgments to carry paragraph numbers as it allows for ease of reference and enhances the structure, improving the readability and accessibility of the judgments. A Table of Contents in a longer version assists access to the reader.

21. On the note of accessibility, the importance of making judgments accessible to persons from all sections of society, especially persons with disability needs emphasis. All judicial institutions must ensure that the judgments and orders being published by them do not carry improperly placed watermarks as they end up making the documents inaccessible for persons with visual disability who use screen readers to access them. On the same note, Courts and tribunals must also ensure that the version of the judgments and orders uploaded is accessible and signed using digital signatures. They should not be

scanned versions of printed copies. The practice of printing and scanning documents is a futile and time-consuming process which does not serve any purpose. The practice should be eradicated from the litigation process as it tends to make documents as well as the process inaccessible for an entire gamut of citizens.

22. In terms of structuring judgments, it would be beneficial for Courts to structure them in a manner such that the „Issue, Rule, Application and Conclusion? are easily identifiable. The well-renowned 'IRAC' method generally followed for analyzing cases and structuring submissions can also benefit judgments when it is complemented by recording the facts and submissions.

23. The 'Issue' refers to the question of law that the Court is deciding. A Court may be dealing with multiple issues in the same judgment. Identifying these issues clearly helps structure the judgment and provides clarity for the reader on the specific issue of law being decided in a particular segment of a judgment. The 'Rule' refers to the portion of the judgment which distils the submissions of Counsel on the applicable law and doctrine for the issue identified. This rule is applied to the facts of the case in which the issue has arisen. The analysis recording the reasoning of a Court forms the 'Application' section.
24. Finally, it is always useful for a Court to summarize and lay out the 'Conclusion' on the basis of its determination of the application of the rule to the issue along with the decision vis-à-vis the specific facts. This allows stakeholders, especially members of the bar as well as judges relying upon the case in the future, to concisely understand the holding of the case.

25. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, in a lecture at an orientation course for new Judges, recommended a similar structure which facilitates orderliness and produces a logical, flowing judgment:

(a) An introductory section;
(b) Setting out of the facts:
(c) The law and the issues;
(d) Applying the law to the facts;
(e) Determining the relief (including order for costs); and
(f) Finally, the order of the Court.

26. Although it is unfortunate that we have to set aside the impugned

judgment and direct its remand due to its incoherence, we have taken the opportunity to lay out the above discussion on judgment writing. Incoherent judgments have a serious impact upon the dignity of our institutions.

27. While we have laid down some broad guidelines, individual Judges can indeed have different ways of writing judgments and continue to have variations in their styles of expression. The expression of a Judge is an unfolding of the recesses of the mind. However, while recesses of the mind may be inscrutable, the reasoning in judgment cannot be. While Judges may have their own style of judgment writing, they must ensure lucidity in writing across these styles. This has also been captured by Justice Corbett, in the following extract:

> For lucidity should be the prime aim of any judgment-writer. At the same time, certain aspects of style have a bearing on lucidity. In this connection, my advice (for what it is worth) is to keep your language and your sentence construction simple. Write in short sentences and do not try to pack too many ideas into a single sentence. Particularly in setting out facts, try to maintain a simple, straightforward flow to your narrative. Try to avoid the repetition of words or phrases and observe the normal rules of grammar. A well-known exponent of simple language and the simple sentence was Lord Denning.
>
> (emphasis supplied)

28. Echoing a similar sentiment, Justice Michael Kirby, a distinguished former Judge of the High Court of Australia notes:

Brevity, simplicity and clarity. These are the hallmarks of good judgment writing. But the greatest of these is clarity.

29. In view of the incomprehensibility of the impugned judgment, we allow the appeal and set aside the judgment of the High Court of Himachal Pradesh dated 27 November 2020 in CWPs No 3597 of 2020 along with 4844 of 2020.

30. CWPs No 3597 of 2020 along with 4844 of 2020 are restored to the file of the High Court of Himachal Pradesh for being considered afresh. In paragraphs 3 and 6 of the earlier order of this Court dated 12 March 2021, certain observations are contained on the merits of the award of the CGIT and on the finding of misconduct which was

arrived at against the respondent in the disciplinary proceedings. Since the proceedings are being remitted back to the High Court, it is clarified on the request of Counsel for the respondent, that all the rights and contentions of the parties on merits are kept open.

31. Considering that the writ petitions were filed in 2020 and the termination of service goes back to the year 2013, we would request the High Court to expedite the disposal of the writ petitions.

32. Pending applications, if any, stand disposed of.■

Appeal Allowed.

[2022 (175) FLR 439]
(DELHI HIGH COURT)
NAJMI WAZIRI and VIKAS MAHAJAN,JJ.
L.P.A No. 757 of 2019
August 8, 2022
Between
STATE BANK OF INDIA
and
SH.V.K.BAKSHI

Industrial Disputes Act, 1947-Sections 10 and 11-A –Default in payment of loans-Cheques issued by respondent defaulted-Respondent was working as Senior Assistant in petitioner Bank-Petitioner issued charge-sheet-Removal from service-Labour Court changed the major punishment to a minor punishment-Learned Single Judge refused to interfere-Hence, the instant appeal by Bank-Held, respondent/workman had taken loan without any prior approval of bank authority-Award of Labour Court was supported by reasons which were based upon the material on record-Labour Court had exercised its discretion judicially which called for no interference-Writ appeal dismissed.[Paras 15 to 18]

JUDGMENT

VIKAS MAHAJAN, J.- The question for consideration of this intra-court appeal is: Whether the Labour Court could reduce the penalty from „removal from service? to "stoppage of three increments with

cumulative effect?, in exercise of its discretionary jurisdiction under section 11- A of the Industrial Disputes Act, 1947?

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

3. A charge-sheet was issued against the respondent on 27.03.2006 by the appellant alleging major misconduct, enumerating the following charges:

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

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

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

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

3. You have raised loan from Everglad Chit Funds Pvt. Ltd. without obtaining specific approval from the competent authority. In this connection, an attachment order issued on 27.09.2003 by Civil Judge, Tis Hazari, Delhi for attachment of your salary to the extent of ₹ 59,495/- due to the decree holder M/s Everglad Chit Funds Pvt. Ltd. was received at our Shakti Nagar Branch. Monthly instalment

of ₹ 2000/- of your salary is being remitted to the Court and ₹ 20,000/- (Approx) have so far been appropriated.

4. You raised loan of ₹ 50,000/- from Indian National Co-op (NA)Thrift & Credit Society Ltd. Hissar on 04.07.2003 without seeking prior permission of the bank. Further, you issued an Account Payee cheque No. 403411 dated 25.09.2004 drawn of SBI, GT Karnal Road, Delhi for ₹ 77,240/- in favour of the above society. Before the cheque could be presented, you closed the account. You were served with a legal notice on 13.10.2004 under section 138/141 of Negotiable Instruments Act on 01.10.2005, Hisar and Delhi Police Officials came to Shakti Nagar branch with non-bailable warrants issued by Judicial Magistrate, Hissar to arrest you and took you away at 2:00 pm.
5. The total deduction from the salary is 81.07% against the Bank?s extent instructions that total deductions will not be more than 60% of the gross salary.

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

(i) Bank Staff Co-op Urban SE T& C Society Ltd., Hissar.
(ii) International Co-op Non Agriculture T & C Society Ltd., Hissar.
(iii) ECBE Staff Co-op Credit Society Ltd., Meerut.
(iv) Indian National Co-op Non. Agri. T & C Society Ltd., Hissar.
(v) Bhartiay State Bank Karyakarta Co-op T& C Society Ltd., Kirti Nagar.
(vi) SBI Employees T & C Society Ltd., Ranjit Nagar, Delhi.

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

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

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

(ii) Whether punishment awarded to the claimant was proportionate to his misconduct?
(iii) As in terms of reference.
(iv) Relief."

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

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

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

9. Mr. P.B.A. Srinivasan, the learned Counsel for the appellant contended that: (i) the Award of the the Labour Court as well as the judgment of the learned Single Judge have erred on jurisdiction: (ii) most of the charges against the respondent were proven, the workman has admitted his guilt in his reply to the charge sheet; (iii) the power under section 11-A of the Act is to be exercised judicially and not arbitrarily; (iv) the Labour Court could alter the punishment imposed by the employer only if it was satisfied about the necessity to interfere and any such satisfaction or interference must be supported by reasons and (v) in the present case the interference by the Labour Court under Section 11-A of the Act is not supported by any reasons. Therefore, the Labour Court ought not to have reduced the penalty. In support of this contentions, he placed reliance on the decision of this Court in Municipal Corporation of Delhi v. Daulat Ram & anr.

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

11. Before proceeding further to decide the controversy at hand it will be apt to refer to the provisions of section 11-A of the Act which reads as under:

> "11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. -Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal, and direct re-instatement of the workman on such terms including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:
>
> Provided that in any proceedings under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

12. The law, on the scope of power of the Labour Court, to vary and reduce the punishment in exercise of its discretionary jurisdiction under section 11- A of the Industrial Disputes Act, 1947 is quite clear. However, two decisions of the Supreme Court which are apposite to the question involved in this case, can profitably be referred to. In Mahindra and Mahindra Ltd. v. N.B. Narawade, a three Judge Bench of the Supreme Court, has observed as under:

> "20. It is no doubt true that after introduction of section 11- A

> in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment....."

13. In Life Insurance Corporation of India v. R. Suresh, the Supreme Court held as under:-

> "31. An Industrial Court in terms of Section 11-A of the Act exercises a discretionary jurisdiction. Indisputable, discretion must be exercised judiciously. It cannot be based on whims or caprice.
>
> 32. Indisputably again, the jurisdiction must be exercised having regard to all relevant factors in mind. In exercising such jurisdiction, the nature of the misconducts alleged, the conduct of the parties, the manner in which the enquiry proceeding had been conducted may be held to be relevant factors. A misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own facts. In given cases, even the doctrine of proportionality may be invoked."

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

> "35. On the basis of the above discussion, the principles of law on the scope of interference by a Labour Court or Tribunal under section 11-A of the Act in regard to the quantum of

punishment may now be summed up as follows:

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

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

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

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

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

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

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

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

15. We have perused the Award of the Labour Court in the light of the legal principles as enunciated and explained in the above-noted decisions. It has examined each charge against the respondent/workman and sifted through the evidence on record. It has been noted that the allegations against the respondent/workman essentially pertain to raising of loans without seeking prior approval of the competent authority, which fact was also candidly admitted by the respondent/workman in his reply to the charge sheet. The Labour Court also noted the justification given by the respondent/workman that the loans were raised by him on account of illness of his daughter, purchase of a house and establishment of business of his son. With regard to the allegation of respondent's outstanding amount towards one M/s Evergreen Chit Fund Pvt. Ltd., the Award

has concluded that the respondent has not borrowed any loan from the said company. In fact, the brother of the respondent took a loan for which the respondent stood as guarantor but due to the untimely death of the said brother, the borrowed amount could not be returned by the borrower. Nevertheless, in time-through installments the due amount stood paid by the respondent/workman. Having regard to the evidence on record, the Labour Court concluded that the respondent/workman had not been found guilty of any charge involving moral turpitude and that the overdue loan amounts stood repaid. Premised on the above factors, it concluded that punishment of 'removal from service' was very grave and severe in nature and was liable to be reduced to 'Stoppage of three increments with cumulative effect'.

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

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

17. Evidently before altering the punishment, the Labour Court has recorded its satisfaction that the punishment imposed upon the workman is disproportionate to the degree of guilt or wrongdoing of the respondent/workman. Such satisfaction is supported by reasons which are based upon the material on record. The Labour Court has not committed any error of law. It has exercised its discretion judicially within the parameters of law. Reduction in punishment as ordered by the Labour Court, therefore, needs no interference.

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

Appeal Dismissed.

[2022 (175) FLR 474)
(GAUHATI HIGH COURT)
R.M.CHHAYA, C.J. and SOUMITRA SAIKIA,J.
W.A. No. 275 of 2021
September 5, 2022
Between
ASSAM GRAMIN VIKAS BANK
and
SMT. BABITA GUPTA

Payment of Gratuity Act, 1972-Section 4-Assam Gramin Vikas Bank (Officers and Employees) Service Regulations, 2010-Regulation 72 (1) and 72 (2) (d)- Payment of gratuity denied –Service rendered by respondent was 5 years 10 months only-Held, the service period disentitled the respondent from the benefit of gratuity as provided under Regulation 72 (2)(d)-Lower or higher amount of gratuity as provided under Regulation 72 (1) of 2010 Regulation would arise only when the employee is otherwise eligible for gratuity-Learned Single Judge committed error in directing the payment of gratuity under section 4 of Act-Judgment and order quashed-Appeal allowed. [Paras 8 to 15]

JUDGMENT

R. M. Chhaya, C.J- Feeling aggrieved and dissatisfied by the judgment and order dated 09.03.2021 passed by the learned Single Judge in Writ Petition (Civil) No. 1697/2018, the original respondents have preferred this writ appeal.

2. Heard Mr. S. Dutta, learned senior Counsel assisted by Ms. S. Mochahari, appearing for the appellant, and Ms. D. Borgihain, learned Counsel, with Ms. G. Purkayastha, appearing for the respondent.

3. The following noteworthy facts arise out of this appeal:

(i) The respondent was working in the appellant bank in the post of Junior Management Scale-I Officer since 28.05.2012. As per the record, the respondent was transferred from Head Office of the appellant bank to Nalbari Branch on 27.11.2017. The record indicates that on such transfer having been made,

the respondent filed representation before the Chairman of the bank to reconsider her transfer. However, as the said representation was not considered favourably, she tendered her resignation vide her letter dated 27.11.2017 from the post of Assistant Manager with effect from 03.03.2018. The appellant bank accepted the resignation so filed by the respondent and relieved her from service with effect from 03.03.2018. On 16.01.2018, the respondent filed an application before the appellant bank for payment of gratuity. Upon considering the same, the appellant bank, vide a communication dated 08.02.2018 informed the respondent that as per the provision of Regulation 72(2)(d) of the Assam Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 (hereinafter referred to as "2010 Regulation"), as the respondent has not completed 10 years of service but has, in fact, completed only 5 years and 10 months of service till the date of her resignation, she will not be eligible for any gratuity.

(ii) The said decision taken by the appellant came to be challenged by the respondent by way of filing the present writ petition mainly on the ground that as per section 4 of the Payment of Gratuity Act, 1972 (hereinafter referred to as "1972 Act" for the sake of brevity), as the respondent has completed 5 years of service, she would be entitled to gratuity. In the writ petition, the respondent/original petitioner, relying upon the chronology of service rendered by her, further contended that as per the provisions of the 1972 Act and, more particularly, section 14 of the 1972 Act, the 2010 Regulations cannot be brought into effect to deny the benefit confirmed by section 4 of the 1972 Act. It is also contended by the respondent/ original petitioner that as she has put in 5 years 10 months service, she would be entitled to gratuity equivalent to an amount or more than 5 months' salary. In the writ petition it was also contended by the respondent/original petitioner that the appellant/original respondent have misconstrued the provisions contained in Regulation 72 of the 2010 Regulation and have thus deprived the respondent/original petitioner from her legitimate right of payment of gratuity and, inter alia, prayed as under:

"In the premises aforesaid it is therefore, humbly prayed that Your Lordships may be pleased to admit this petition and call for the records, issue a Rule calling upon the respondents to show cause as to why the relief sought for in this application should not be granted and on cause or causes being shown and on hearing the parties and perusal of records be pleased to direct the respondent authorities to pay the gratuity due to the petitioner on her resignation from service and calculated as per Regulation 72(3) of the Service Regulation of 2010 along with interest and/or pass any other such order or orders as Your Lordships may deem fit and proper."

(iii) The appellant herein/original respondent filed a detailed affidavit-in-opposition and denied the contentions raised by the respondent/original petitioner. The learned Single Judge came to the conclusion that as the respondent has not fulfilled the conditions of eligibility as per Regulation 72(3) of the 2010 Regulation and as the 2010 Regulations is a Special Act, no other Act can override it. However, the learned Single Judge came to the conclusion that the writ petitioner is eligible for claiming gratuity under the 1972 Act and while allowing the writ petition, the respondents (present appellant) were directed to process payment of gratuity to the writ petitioner (present respondent) under the provisions of section 4 of the 1972 Act. Being aggrieved, the bank and its authorities have preferred this appeal as aforesaid.

Mr. S. Dutta, learned senior Counsel appearing for the appellant bank contended that the 2010 Regulations, being framed in exercise of powers conferred by section 30 of the Regional Rural Banks Act, 1976 is a Special Act and, therefore, the Special Act would prevail over the General Act, i.e. the Payment of Gratuity Act, 1972. Mr. Dutta, learned senior Counsel further contended that the respondent/original petitioner has not challenged the 2010 Regulations and, therefore the conditions as laid down under the 2010 Regulations are to be followed. Mr. Dutta further relied upon the judgment of the Apex Court in the case of P. Ranjan Sandhi v. Union of India and another, to buttress the argument that the 2010 Regulations being Special Law will prevail over section 4 of the Payment of Gratuity

Act. Learned senior Counsel for the appellant bank invited attention of this Court to the observations made by the Apex Court in paragraph 11 of the said judgment, which reads as under:

"11. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalist Act gratuity can be denied if the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that section 5 of the working Journalists Act being a special law will prevail over section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists. Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P Singh's Principles of Statutory Interpretation, 9th Edn., 2004, pp.133 and 134."

4. Mr. S. Dutta, learned senior Counsel appearing for the appellant/original respondents further relied upon the judgment of the Division Bench of this Court in WA No. 59/2015 (United Bank of India v. Sujoy Kumar Roy), dated 26.05.2016, whereby the Division Bench of this Court, while examining similar Regulations of United Bank of India has held that the said Regulations being specially framed, would govern the conditions of service of the employees of the bank and would override the provisions of the Payment of Gratuity Act, 1972. Mr. Dutta further contended that as the service conditions of the present respondent are governed by the provisions of the 2010 Regulations, the respondent, for being eligible for payment of gratuity, has to have the eligibility criteria as prescribed under Regulation 72(2)(d). According to Mr. Dutta, learned senior Counsel for the appellant bank, as the respondent/original petitioner tendered her resignation before completing 10 years of continuous service, the respondent/original petitioner is not eligible for any gratuity as per the conditions laid down under Regulation 72(2)(d) of the 2010 Regulations. Mr. Dutta contended that the learned Single Judge,

while holding that the provisions of the 2010 Regulations will have overriding effect, has committed an error in directing the appellant bank to process the case of the respondent for payment of gratuity under section 4 of the 1972 Act. With the aforesaid grounds, the learned senior Advocate for the appellant submitted that the appeal be allowed and the impugned judgment be quashed and set aside.

5. Per contra, Ms. D. Borgohain, learned Counsel for the respondent/original petitioner has supported the impugned judgment and order. According to the learned Counsel for the respondent/original petitioner, the learned Single Judge has rightly come to the conclusion that the respondent/original petitioner would be entitled to payment of gratuity under section 4 of the 1972 Act. Hence, no interference is called for. Relying upon a judgment of the learned Single Judge dated 18.09.2019, in WP(C) 3086/2018 (Assam Gramin Vikash Bank and anr. v. The Union of India and Ors.) and a batch of connected writ petitions as well as the judgment of the Division Bench of this Court dated 02.11.2021, in WA 112/2020 (Assam Gramin Vikash Bank and anr. v. The Union of India and ors.) and a batch of connected writ appeals, Ms. Borgohain, learned Counsel for the respondent has submitted that the appeal being bereft of any merits, deserves to be dismissed.

6. No other or further submissions, grounds or contentions have been raised by the learned Counsel appearing for the parties.

7. We have heard the learned Counsel appearing for the parties. At the outset, it deserves to be noted that the respondent/original petitioner was appointed in the post of Junior Management Scale-I (Assistant Manager) with the appellant bank on 28.05.2012 and she resigned from the said post with effect from 03.03.2018 vide her resignation letter dated 27.11.2017. It is a matter of fact that the respondent has worked in the appellant bank for 5 years 10 months. At this juncture, it would be apt to refer to section 30 of the Regional Rural Banks Act, 1976 (hereinafter referred to as "Rural Banks Act"). The Statements of Objects and Reasons of the said Act indicate that the said Act was enacted with a view to develop the rural economy of the country. In order to ensure that the Regional Rural Banks observe the utmost economy in their functioning, it is

statutorily provided that in determining the remuneration of the officers and employees appointed by the Regional Rural Banks, the Central Government shall have due regard to the salary structure of the employees of comparable level and status of the State Government and the local authorities. Section 30 of the Rural Banks Act reads thus:

> "30. Power to make regulations. – (1) The Board of directions of a Regional Rural Bank may, after consultation with the Sponsor Bank and the National Bank, and with the previous sanction of the Central Government, by notification in the Official Gazette make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) Every regulation shall, as soon as may be after it is made under this Act by the Board of Directors, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

8. It is a matter of fact that the Board of Director of the appellant bank, in exercise of power conferred by section 30 of the Rural Banks Act, after consultation with the sponsor bank, i.e. United Bank of India and NABARD and "with the previous sanction of the Central Government has made the Assam Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010. Thus, exhaustive Regulations have been made in the form of the service conditions of the officers and employees of the appellant bank. Regulation 72 of the said Regulations provides thus:

"72. Gratuity. – (1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

(2) Every officer or employee shall be eligible for gratuity on, -

(a) retirement,
(b) death,
(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or
(d) resignation after completing 10 years of continuous service, or
(e) termination of service in any other way except by way of punishment after completion of 10 years of service;

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only

(3) The amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 months' pay:

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that in respect of an officer the gratuity is payable based on the last pay drawn:

Provided also that in respect of an employee pay for the purpose of calculation of the gratuity shall be the average of the basis pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service,

as the case may be."

9. Thus, the 2010 Regulations were made in exercise of the powers to make regulations, as provided under section 30 of the Rural Banks Act, as observed hereinabove. Sub-section (2) of section 30 of the Rural Banks Act further provides that every regulation shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days and when both Houses agree, the regulation shall thereafter have effect. Thus, the service conditions of the employees of the appellant bank are governed by the regulations which have passed through the test of the Parliament. The 2010 Regulations thus have a statutory force and it is a special law which governs the service conditions of the employees of the appellant bank. Regulation 72(1) cannot be read in isolation while considering the aspect of gratuity of an officer or an employee. Regulation 72(1) in fact provides that an officer or an employee shall be eligible for payment of gratuity as per the provisions of the 1972 Act, or as per sub-regulation (2), whichever is higher. However, for being eligible for such payment of gratuity, as provided under Regulation 72(2), every officer or employee who has resigned is required to have rendered 10 years of continuous service for being eligible for gratuity. In the case on hand, it is not the case of the respondent that she has completed 10 years of continuous service. Thus, Mr. Dutta, learned senior Counsel for the appellant is correct in asserting that the 2010 Regulations, being a special law, would override the general law, i.e. the 1972 Act.

10. In the case of P. Rajan Sandhi (supra), the Apex Court observed in paragraph 11 of its judgment thus:

> "11. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalists Act gratuity can be denied if the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the Working Journalists Act being a special law will prevail over section 4(6) of the Payment of Gratuity Act which is a

general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists. Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, pp. 133 and 134."

11. In the case on hand also, as observed above, the 2010 Regulations, made under section 30 of the Rural Banks Act, has a statutory effect and thus the same would prevail over the provisions of the general law, i.e. the 1972 Act.

12. In a similar way, the Division Bench of this Court in Sujoy Kumar Roy (supra) has observed thus:

> "A perusal of the Regulations of 1979 goes to show that the same had been framed in exercise of powers conferred under Section 19 read with sub-section 2 of section 12 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 by the Board of Directors of the United Bank of India. Regulations of 1979 would, therefore, have the force of a statute and would bind the bank and its employees.
>
> Having heard the learned counsels for the parties and on an examination of the provisions of the Service Regulations of 1979, we are of the opinion that the said regulations, being specially framed to govern the conditions of service of the employees of the Bank, would override the provisions contained in the Act of 1972. Therefore, the decisions cited by Mr. Medhi would be of no assistance to him in the facts of the present case. Since the respondent has been dismissed from service by way of punishment, hence, he would not be entitled to receive gratuity in view of the bar constituted by Regulation 46. As such, the direction issued by the learned Single Judge for payment of gratuity in favour of the respondent was illegal and the same is hereby set aside.
>
> The writ appeal stands allowed.

> There would be no order as to costs."

13. The judgments which are relied upon by the learned Counsel for the respondent/original petitioner do not deal with the eligibility of an employee for gratuity as provided under Regulation 72(2)(d), but in all the cases, which are relied upon by the learned Counsel for the respondent/original petitioner, the employees of the bank were found to be eligible for gratuity as per the 1972 Act and, hence, they were found to be entitled to the benefit of Regulation 72(1) of the 2010 Regulation. The question which arose for consideration in the aforesaid writ petitions and the writ appeals, which are relied upon by the learned Counsel for the respondent/original petitioner, was the higher amount of gratuity to be paid to the respondent employees and, therefore, those judgments shall have no application to the facts of the present case wherein the very eligibility of the respondent/original petitioner for gratuity has been questioned as the respondent/original petitioner has, admittedly, not completed 10 years of service on her resignation but has completed only 5 years and 10 months, which disentitles her from the benefit of gratuity as provided under Regulation 72(2)(d). Lower or higher amount of gratuity, as provided under Regulation 72(1) of the 2010 Regulation would arise only when the employee is otherwise eligible for gratuity.

14. In our considered view, therefore, even though the learned Single Judge came to the conclusion that the respondent/original petitioner would not be entitled to receive gratuity under Regulation 72(2) of the 2010 Regulation, has committed an error in directing the appellant bank to process the payment of gratuity to the respondent/original petitioner under section 4 of the 1972 Act.

15. In the light of the aforesaid, therefore, the impugned judgment and order deserves to be quashed and set aside. Accordingly, the appeal is allowed. The impugned judgment and order dated 09.03.2021, passed by the learned Single Judge in Writ Petition (Civil) No. 1697/2018, is hereby quashed and set aside.

16. Parties to bear their own costs.■

Appeal Allowed.

CONTENTS

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