From the Desk of Editor

MAINTAINING COMPOSURE: THE CORNERSTONE OF EFFECTIVE CROSS-EXAMINATION

The guiding lights of justice and fairness illuminate the path for all domestic inquiries. While our Departmental Enquiries may not be strictly governed by the Indian Evidence Act, they do draw inspiration from its spirit, particularly Section 138, which delineates the structure for examination-in-chief, cross-examination, and re-examination. Never lose your temper is the cardinal rule for individuals assuming the important role of Defence Representatives especially at the time of Cross-examination that calls for a more composed, concentrated, and calm state of mind. The essential concepts outlined below can assist defence representatives in taking complete control of the situation while cross-examining a witness if they remain composed throughout the process.

1. Examination in Chief

The Examination-in-Chief is a fundamental pillar in domestic proceedings that enables the establishment of true and reliable testimony. In the opening phase, the presenting officer or defence representative for a party has the chance to obtain crucial information from a witness and give an organised, thorough narrative that could serve as the foundation for the case. This procedure is crucial for both presenting the facts and directing the direction of the legal discourse. It serves as a testament to the fundamental truths of the facts and serves as the framework for the witness's account of what happened.

By setting out the facts as perceived by the examining side, it prepares the ground for the cross-examination.

2. Art of Cross-Examination

Cross-examination serves as a pivotal juncture in our domestic proceedings, allowing the Defence to scrutinize a witness's testimony from the Examination-in-Chief. It's essential to understand that cross-examination is a discretionary right, not an obligation. The decision to proceed should be made after careful evaluation of the witness's relevance to the case and the charges at hand.

There exists a common misconception that a witness must always be cross-examined after their examination-in-chief. However, it's crucial to weigh the witness's statements for their impact on the case before deciding to cross-examine. If a statement is left unchallenged, it could corroborate other testimonies, potentially unfavorable to the Defence. Therefore, assess the need, the specific points for challenge, and the limits before embarking on cross-examination.

Preparation is key. The Defence should analyze the charge-sheet meticulously to identify the critical components the witness's testimony affects. This will shape the focus and extent of cross-examination, ensuring it is neither random nor counterproductive.

Cross-examination is more than a procedural step; it's an art requiring skill, precision, and a keen understanding of human psychology. It offers the Defence a robust tool for evaluating a witness's memory, perception, and integrity. The objective is to unearth the truth.

Here are some universally applicable guidelines:

1. **Testing Memory and Perception:** Formulate questions to assess the witness's recall and consistency.

2. **Identifying Contradictions:** Target contradictions in the testimony to evaluate the witness's credibility.

3. **Impeaching Character:** Craft subtle questions to expose any biases or dishonesty that could undermine the testimony.

4. **Proving Personal Gain or Enmity:** If a witness seems to have a stake in the case, questions to expose this can be invaluable.

5. **Challenging Hearsay:** Distinguish between what the witness personally experienced and what they heard from others.

6. **Source of Knowledge:** Confirm how the witness came to know specific details to ensure their testimony isn't hearsay-based.

7. **Highlighting Improbabilities:** Point out any implausible or illogical statements to assess the witness's overall reliability.

Always remember, that cross-examination is not a mandatory exercise but a strategic one. Use it wisely, as it can either be a valuable asset or a double-edged sword.

3. Leading Questions in Cross-Examination

Leading questions are formulated to elicit specific answers, and they are a fundamental element of cross-examination. Unlike in Examination-in-Chief, where such questions are not permitted, cross-examination relies on them to direct the witness toward confirming or refuting statements beneficial to the defence. These questions are designed to be straightforward, aiming to prevent the witness from offering additional explanations or clarifications.

The goal of using leading questions in cross-examination is to corner the witness into taking specific stances that serve the defence. Suggestions may also be presented for the witness to either agree or disagree with. Importantly, the questions should be crafted so as not to allow the witness to reconfirm the validity of their initial testimony. Instead, the focus of the cross-examiner should be on exposing contradictions, conflicts, inconsistencies, biases, or motives in the witness's statements.

4. Limits to Cross-Examination

Cross-examination serves a specific purpose: to challenge the credibility and completeness of a witness's testimony given during Examination-in-Chief. However, it must be conducted within ethical and legal boundaries. Questions should be respectful, pertinent, and aligned with the principles of natural justice, avoiding any attempt to harass or intimidate the witness. The objective is not to showcase the cross-examiner's intellectual prowess but to illuminate inconsistencies, explore alternative interpretations, or undermine the witness's credibility.

Limits to cross-examination are often determined by the quality and applicability of information obtained in favour of the Defence rather than by the quantity or duration of the questions asked. Once the questioning yields no further valuable insights, it reaches its natural limit. Another boundary arises when the credibility of the witness has been sufficiently dismantled, negating the need for further questioning. In conclusion, the limits to cross-examination are determined by its effectiveness in serving the Defense's objectives, while adhering to ethical and legal norms.

5. Silent Cross-Examination

The strategy of "Cross-Examination by Silence" has its own significance. This approach is more than just a tactic; it is a well-considered decision that signals our assessment of the witness's testimony as either insignificant or unworthy of challenge. It is particularly useful when the Presenting Officer has overlooked crucial points during the chief-examination. In such cases, it is wise to heed the proverb, "Let sleeping dogs lie." This strategy ensures that we do not inadvertently bring into the record any responses that could favor the Prosecution and harm our defense.

One should be cautious of the commonly quoted maxim, "Never ask a question without a purpose." While the intention behind this statement is sound, it sometimes leads to the erroneous belief that cross-examination should be avoided unless there is a guaranteed opportunity to discredit the witness. This is far from the truth.

Cross-examination serves multiple purposes: it can clarify facts, bring out inconsistencies, and even elicit favorable information. Therefore, the absence of a direct opportunity to discredit a witness should not deter us from undertaking a cross-examination. The cardinal rule, as Elliot's Advocate aptly puts it, is, "to do no harm, even if no good is done."

6. Compound, Misleading, Dubious & Improper Questions

When engaged in cross-examination, it is paramount to avoid questions that are compound, misleading, dubious, or improper. Such questions not only risk confusing the witness but also compromise the integrity of the entire inquiry.

For instance, compound questions—those that contain multiple queries in a single statement—can be particularly problematic. A witness may agree with one part of the question while disagreeing with another, leading to an unclear or confusing record. Worse still, if one part of a compound question is admissible and the other is not, the entire question may be rightfully excluded, thus missing an opportunity to bring vital information to light.

Misleading, dubious, and improper questions can similarly lead us down a dangerous path, rendering the testimony unreliable and jeopardizing the integrity of the inquiry.

7. Hostile Witness

A witness is termed 'hostile' when they display an antagonistic attitude or offer testimony that contradicts their previous statements. Their demeanor or the nature of their evidence clearly indicates that they are not interested in telling the truth. In such situations, leading questions may be permitted to expose inconsistencies and discredit the witness's testimony.

The law grants certain leeway to handle such cases. According to

Section 154 of the Indian Evidence Act, the Court may permit the person who calls the witness to employ questions typically reserved for cross-examination by the opposing party. Therefore, if a witness initially examined by one party proves to be biased during cross-examination, the party who called the witness has the Court's discretion to challenge the witness's credibility.

In practical terms, should a witness prove to be hostile, the wise strategy is to conclude their testimony as swiftly as possible. This ensures minimal disruption to the proceedings and limits the potential harm they may cause.

The key here is adaptability. The person conducting the examination must be skilled enough to recognize early signs of a hostile witness and adjust their questioning strategy accordingly.

8. Re-Examination

Re-examination serves a unique purpose—it follows the cross-examination and provides an opportunity to clarify or elaborate on issues raised during that phase. If a witness's integrity is unfairly tarnished during cross-examination, re-examination allows a chance to restore it.

The sequence as per Section 138 of the Evidence Act is straightforward: a witness should first be examined-in-chief, followed by cross-examination if the opposing party wishes. Finally, if the party calling the witness desires, a re-examination is conducted. It's important to note that the scope of re-examination should be limited to matters discussed in cross-examination.

Given the delicate nature of re-examination, the person leading this stage should exercise tremendous care and skill. This stage can be instrumental in either strengthening or weakening the case and so it must be approached with utmost integrity.

9. Prosecution Witnesses Called by Defence as Defence Witness

The general rule is that when a prosecution witness is summoned by the defence to serve as a defence witness, the fundamental character as a witness does not change. This allows the defence the right to cross-examine them. This is established by legal precedents such as 28 C 594; 1 CWN 19; 1922 MWN 120, which confirms that the accused has the right to cross-examine prosecution witnesses cited as defence witnesses.

Moreover, a witness listed by the prosecution but not examined retains their status as a prosecution witness, even if subsequently examined by the defence, as established by 71 PLR 1910. Hence, the defence is within its rights to cross-examine such a witness. Understanding this legal standpoint can be an invaluable asset when strategizing for disciplinary inquiries.

In conclusion, the art of cross-examination is an intricate and subtle skill that demands more than mere factual knowledge. It calls for a mastery of human psychology, a meticulous approach to case details, and above all, an unwavering commitment to justice and truth. When done correctly, cross-examination serves as an indispensable tool in the pursuit of fairness, enabling the Defence to bring out contradictions, expose fallacies, and uphold the sanctity of the judicial process. Let us continually hone this craft with the integrity and diligence that our esteemed organization and beloved federation deserve. As we navigate through these critical procedures, our dedication to these principles will not only strengthen our collective resolve but also fortify the pillars of justice we are committed to uphold.■

Article

UNFAIR LABOUR PRACTICES MAY LAND EMPLOYERS AND TRADE UNIONS IN TROUBLE

By....H.L.Kumar, Advocate

What is unfair labour practice? According to Section 25-U of the Industrial Disputes Act. It means; employers or workers cannot engage in such activities that are against the welfare and peace of employers and workers as well. For instance, if a trade union or its members are engaged in picketing in a manner that non-striking workmen are physically debarred from entering the workplace or they are indulging in acts of force or violence or holding out threats of intimidation in connection with the strike against non-striking workmen or against managerial staff, it will amount to unfair labour practice on the part of the employees trade unions but on the other hand interference restraint or coercion of employers in the exercise of workers' rights their domination on workers or encouragement or discouragement of union membership by is considered unfair labour practice by the employers. Section 25-T of the Industrial Disputes Act is amply clear in this regard which prohibits the unfair labour trade practice by the employer or trade unions regardless of whether they are being registered or not.

Many employers think that they can get away by transferring one or many employees from one place to another because the transfer is the prerogative of the management then they are wrong. Any transfer which leads to demotion or changes in terms and conditions of employment will be considered to be unfair labour practice even if the transfer is procedurally and substantially appropriate. Further Section 25-U says that the penalty for committing unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to one thousand rupees or both.

The Industrial Disputes Act is the main legislation for the investigation and settlement of all industrial disputes. It enumerates the contingencies when a strike or lockout can be

lawfully resorted to when they can be declared illegal or unlawful conditions for laying off retrenching discharging or dismissing a workman, circumstances under which an industrial unit can be closed down and several other matters related to industrial employees and employers. Independent and responsible unions and an orderly rational environment free from the unfair labour practice of collective bargaining mark a distinct milestone in the progress of the trade union movement. The rise of the practice of collective bargaining has played an extremely important role in the history of industrial relations. The expression unfair labour practice is widely used in decisions of the Industrial Tribunals, Appellate Tribunals, High Courts and the Supreme Court and refers to unjust dismissals unmerited promotions partiality towards one set of workers and every form of victimisation.

Some time back a small piece of news was published in the Economic Times which narrated that one Adarsh Gupta the owner of Liberty Enterprises a subsidiary of footwear maker Liberty Shoes was sentenced to six months imprisonment by the Chief Judicial Magistrate, Karnal (Haryana) for committing unfair labour practices under the Industrial Disputes Act. Obviously, this sent shock waves in the corporate and industrial world. The company closed down a unit in Gharaunda near Karnal and retrenched 1500 workers in November 2008 an act which was termed illegal. As per labour laws, a company employing more than 100 workers needs prior sanction for the closure of an industrial establishment. Liberty workers 900 regular and 600 contractual fought a legal battle to recover wages terminal dues and gratuity. Over 350 workers took legal recourse for wage recovery. It hardly needs to be underlined that under the Industrial Disputes Act when an employer is employing 100 or more workers in an industrial establishment there is a tedious provision for pruning the featherbedding i.e. requiring an employer usually under a union rule or safety statute to employ more workers than are needed or to limit production without the prior permission of the relevant government.

One may not have to unnecessarily jog the memory; therefore it must be stated that the Fifth schedule was inserted in the

Industrial Disputes Act 1947 which has enumerated unfair labour practices on the part of the employers and trade union of employees as well as on the part of workmen and Trade Union of Workmen. As they say every dark cloud has a silver lining and therefore it should be accepted as a wake-up call. Industrialists would do immense good to their ilk and society if they stand up against irrational laws of Quota-permit Raj on the one hand and on the other they must comply with the laws with due care and diligence. They must also be aware of the fact that no tears are to be shed even by those officials and politicians who have been thriving on the ill-gotten money from those who are actually generating employment and wealth for the country. This Amending Act was brought into force with effect from 21st August, 1984. Amongst 16 unfair labour practices as enumerated in the Fifth Schedule on the part of employers it is pertinent to refer to clause 7 which provides: To transfer a workman mala fide from one place to another under the guise of following management policy is equally wrong if it is done with mala fide and against the rules.

Following are the bare facts of the case as referred to above. A complaint was filed by the State Government, Haryana through the Labour Inspector Karnal (Haryana) against the accused Adarsh Gupta saying that he happened to be the Occupier and responsible person of M/s. Liberty Enterprises unit No.3 and he was responsible for the mala fide transfer of workmen from the manufacturing unit to a location where no factory within the meaning of the Factories Act 1948 existed and the mala fide transfer of the workmen amounted to "Unfair Labour Practice" within the meaning of entry No.7 of Schedule V of the Industrial Disputes Act, 1947 and thereby the accused allegedly committed an offence under section 25-T punishable under section 25-U of the Industrial Disputes Act 1947. As per section 32 of the Industrial Disputes Act 1947 when an offence is committed by a company every Director Manager Secretary, Agent or other officer or person concerned with the management thereof shall unless he proves that the offence was committed without his knowledge or consent be deemed guilty of such offence.

As per section 34 of the Industrial Disputes Act 1947, a complaint is to be filed by the appropriate authority/appropriate Government for taking cognizance of any offence punishable under this Act. Section 25-T of Chapter V-C of the Industrial Disputes Act prohibits "Unfair Labour Practice" on the part of the employer or workmen or a Trade Union and the penalty for committing "Unfair Labour Practice" is provided under section 25-U of the Act any person who commits any "Unfair Labour Practice" shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 1,000/- or with both. There have been complaints with similar allegations of the mala fide transfer of workmen and thereby committing "Unfair Labour Practice" and 38 complaints have been pending before the Chief Judicial Magistrate at Karnal. In June 2006 there was labour unrest in the factory of M/s. Liberty Enterprises Gharaunda, Karnal which resulted in a strike by the workmen and that strike continued from June 2006 to 22.12.2006. A settlement was arrived at between the employer i.e. M/s. Liberty Enterprises Limited and the Workers Union. During the period of the strike, an application dated 10.11.2006 was made by M/s. Liberty Shoes Limited Gharaunda to the Chief Inspector of Factories Haryana for the amendment of the license of the factory and it was stated that M/s. Liberty Shoes Ltd. is going to start a new manufacturing unit at Gharaunda.

In the above background, the point to be adjudicated has been as to whether there was a mala fide transfer of workmen from the manufacturing units of Gharaunda to 'Phusgarh' and 'Sonipat'. The present complaint regarding the mala fide transfer has been of Prem Singh to HSIDC Sonipat. On 16.10.2007 the representatives of the Management of M/s. Liberty Enterprises has given in writing that 'there is no business of any type and no work is being done by the firm so there was a deemed closure of the manufacturing unit on the part of the M/s. 3 Liberty Enterprises through the application of M/s. Liberty Enterprises filed under section 25-O of the Industrial Disputes Act pertaining to the grant of permission for closing down an industrial establishment was rejected by the Government. In these circumstances, the accused was not entitled to take the plea that there was no closure of the manufacturing unit and that the

accused was also stopped from taking the plea that no workman was transferred from manufacturing unit Gharaunda to some other place. It has been apparent that transfers of all those workmen who were creating a nuisance or who had played a negative role during the period of strike were made by the management of the M/s. Liberty Enterprises. It is often used to mean such open or underhand means which are adopted both by the employers and workmen to cause annoyance disturbance damage or loss to each other.

In T. Rajaiah v. Southern Roadways Ltd., Madurai the Madras High Court held that the workman challenged his transfer on the plea of Mala fide and unfair labour practice on the part of the employer. It was held that there is a statutory prohibition engrafted in the Industrial Disputes Act prohibiting the transfer of a workman mala fide from one place to another under the guise of following a management policy. Thus a valued right has been created by the statute in favour of the workman from being subjected by his employer to transfer mala fide under the guise of following a management policy. This is a right that has been created by the Industrial Disputes Act in favour of the workman restricting the unfettered right of the management in the matter of effecting transfer of his employees. The obligation not to transfer a workman mala fidely from one place to another under the guise of a management policy was not recognized under the common law. That right is now created by the statute. The right flows from section 25-T of the Industrial Disputes Act read with Item No. (7) of the Fifth Schedule. The above case about the conviction of Adarsh Gupta is an eye-opener for employers and should not be taken with gay abandon. There is no doubt that laws in India are harsh and discriminatory against employers but it is equally true that they have been paying more attention to greasing the palms of corrupt officials rather than meticulously complying with those laws.

Thus there is no need for honest and law-abiding employers to be scared of the laws and rules but they need however must ensure that compliance is done objectively with due diligence and sincerity.■

2023-III-LLJ-258(Del)
LNIND 2023 DEL 2628
IN THE HIGH COURT OF DELHI AT NEW DELHI
Coram:
Hon'ble Mr. Justice Gaurang Kanth
W.P. (C) No. 3643/2003
2nd June, 2023

State Bank of India .....Petitioner
Versus
Presiding Officer and Another ....Respondents

Discharge from Service-Reinstatement-Labour Court held that punishment of discharge imposed by Disciplinary Authority and Appellate Authority on Respondent No.2/Workman was illegal and hence, Respondent No.2 was entitled to reinstatement in service with Petitioner/Bank, hence this petition -Whether, Disciplinary Authority acted arbitrarily to impose punishment of discharge from service on Respondent No.2-Held, exercise of discretion in imposition of punishment by Disciplinary Authority or Appellate Authority was dependent on host of factors such as gravity of misconduct, past conduct, nature of duties assigned to delinquent, responsibility of position that delinquent holds, previous penalty, if any, and discipline required to be maintained in department or establishment he worked-Disciplinary Authority did not take into consideration any of aforesaid factors before discharging Respondent No.2 hence, punishment imposed was illegal and bad in law-No interference in impugned order-Petition dismissed.

JUDGEMENT

GAURANG KANTH, J

The present Writ Petition emanates from the judgment dated 04.02.2003 ("Impugned Award"), passed by the Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, New Delhi, in I.D. No. 143/97 titled as Shri S.K. Taparia v. The Assistant General Manager. Vide the Impugned Award, the learned Labour Court allowed the petition filed by the Respondent No.2 and held that the punishment of discharge imposed by the, Disciplinary Authority and the Appellate Authority on the Respondent No.2 is illegal and cannot

be sustained. The learned Tribunal further held that the Respondent No.2/Workman is entitled to reinstatement in service with the Petitioner/Bank w.e.f. the date of discharge i.e., 02.11.1994 with full backwages along with 9% interest with continuity in service and all other consequential benefits..

FACTS GERMANE TO THE PRESENT WRIT PETITION ARE AS FOLLOWS:

2. Respondent No.2 joined the services of the Petitioner Management at Sadulsahar (Rajasthan) Branch on permanent basis on August 1974. Thereafter he was transferred to various other places from Sadulsahar branch. In March 1978 he was transferred to Hapur and therefrom in 1989 he was transferred to the main branch of Hapur.

3. Respondent No. 2 was the Unit Secretary of S.B.I Staff Association and in that capacity he had been challenging various corrupt malpractices of the then Branch Manager R.K. Rastogi and exposed corrupt practices of other officials, namely Shri R.N Sharma, the then A.G.M (Assistant General Manager) Region-II zonal Office, Shri K.K. Saxena, the then Deputy General Manager at Local Head Office.

4. The Petitioner Management suspended the Respondent Workman no. 2 with effect from 28.12.1989 in relation to certain charges. After a lapse of 18 months of suspension, the Petitioner served a chargesheet dated 12.09.1991 to the Respondent No. 2, with the following charges:

a) That you have been operating fictitious current accounts in the name of:-

i) M/s. Anubhav Khadi udyog after forging the signatures of Shri Rajandra Kumar Mittal. That firm the above current Account No. 617 encunts have been withdrawn after confirming fictitious credits of ₹10,000/-, ₹30,0000/- and ₹ 8,000/- on 17.7.85, 25.7.85 and 7.8.85 respectively.

ii) Shri Yogesh Kumar Account No. 3/016.

b) That you have been engaging in trade/ business by maintaining different accounts in the name of firms at gandhi

Ganj, Hapur Branch after forging the signatures of various individuals who are pertains of various firms.

c) That you were engaging in trade of business with the customers of the bank in that you were holding 70 equity shares of Bindal Agro as on 16.9.89 with Shri. Pankaj Agrawal.

d) That you were negotiating instruments beyond your known sources of income, in that you negotiated a D.U. for ₹ 20,050/-on 6.8.86 which was returned with the objection "refer to drawn".

e) That you received the monthly rent of generator of Gandhi Ganj Hapur Branch by forging the signature of Sh. chatan Prakash sharma.

f) That you took an advance of ₹ 3,500/- on 10.10.85 but did not avail the L.K.C. and the amount was recovered from you on 13.12.85. You again availed of an advance against I.T.C. on 2.11.85 you did not proceed on leave nor you returned the amount of advance. The amount again had to be recovered by debit to S.B. Account on 13.12.1989.

g) That you were having financial transactions with officers of the Bank, in that payment of your cheque NO. 947301 dated 26.6.85 for ₹ 10,000/- was received by Shri D.P.S. Verma , DMGS-II for a consideration known to you only.

h) That you had been having very heavy transactions in your Personal Current Account in excess of your known sources of income.

5. The Petitioner conducted departmental enquiry and the Inquiry Officer submitted his report holding that charges c, d, f and h, as proved and charges a (i) (ii), b, e, and g, as not proved. The Disciplinary Authority agreed with the inquiry officer qua the charges which are proved and disagreed qua the charges are not proved. In view of the same, the Disciplinary Authority issued a show cause notice to the **Respondent No. 2** proposing the punishment of ***"discharge from service"*** and finally vide order dated 26.10.1994 confirmed the said punishment. The Appellate Authority, vide order dated 01.04.1995 rejected the Appeal preferred by the Respondent No. 2.

6. Aggrieved by the same, the Respondent No. 2 raised an Industrial dispute and the appropriate Government referred the said dispute to the learned Industrial Tribunal vide Order No. L-12012/210/96-L.R. (B) dated 18.09.1997, with the following terms of reference:

"Whether the action of the management of State Bank of India in discharging the services of Shri S.K Taparia, Ex- Clerk w.e.f 2.11.94 is just and legal? If not, to what relief he is entitled and from what date?"

7. Respondent No. 2 filed its Statement of Claims raising all his Claims. The Petitioner refuted all the allegations raised by the Respondent No. 2 by filing written statement. Respondent No. 2 filed rejoinder reiterating his case set up in the statement of claim.

8. Based on the pleadings of the parties, the learned Labour Court framed the following issues:

"i. whether the domestic enquiry conducted by the management against the workman is fair and proper?

ii. As in terms of reference."

9. Both the parties led their respective evidences to substantiate their cases. Respondent No. 2 stepped into the witness box as WW-1. On behalf of the Petitioner, enquiry officer Sh. Satnam Singh entered into the witness box as MW-1.

10. Learned Labour Court vide the Impugned Award dated 04.02.2003, allowed the petition filed by the Respondent No. 2 and held that punishment of discharge imposed by the Disciplinary Authority and the Appellate Authority on the Respondent No.2 is illegal and cannot be sustained. The learned Labour Court further held that the Respondent No.2 is entitled to reinstatement in service with the Petitioner w.e.f. the date of discharge i.e., 02.11.1994 with full backwages along with 9% interest with continuity in service and all other consequential benefits.

11. Aggrieved by the same, the Petitioner preferred the present Writ Petition challenging the Impugned Award.

12. This Court vide its order dated 26.09.2003 issued notice to

Respondent No.2. It is also pertinent to mention here that Respondent No.2, during the pendency of this writ petition expired on 01.06.2018 at his residence in Hapur (U.P). Consequently, the legal heirs of Respondent No.2 were brought on record vide order dated 12.12.2018.

SUBMISSIONS ON BEHALF OF THE PETITIONER

13. Mr. Rajiv Kapur, learned counsel for the Petitioner initiated his arguments by submitting that the Impugned Award passed by the Respondent No.1 is bad, illegal, unjust and malafide.

14. It is the contention of learned counsel for the Petitioner that the learned Labour Court overlooked the prayer in the written statement filed by the Petitioner, wherein the Petitioner has specifically mentioned that in case the enquiry is held to be defective, the Petitioner/Bank be given an opportunity to prove the charges against the Respondent No.2.

15. It is averred by the learned counsel for the Petitioner that the allegation of Bias as alleged by the learned counsel for Respondent No.2 was without any evidence and further no specific allegation was mentioned in the Statement of Claims filed by Respondent No.2 before the learned Labour Court. With regard to the alleged Bias committed by the Petitioner, learned counsel for the Petitioner while relying on the judgment of the Hon'ble Supreme Court in the matter of State Bank of Punjab v. V.K. Khanna and Others LNIND 2000 SC 1707 : (2001) 2 SCC 330: AIR 2001 SC 343 submitted that if the Inquiry Officer was biased then he wouldn't hold the charges in favor of Respondent No.2 as not proved.

16. With regard to the issue of Handwriting expert, learned counsel for the Petitioner submitted that the charges levelled against the Respondent No.2 with regard to forgery was proved in the enquiry proceedings and there were convincing reasons, circumstantial evidence in addition to the expert opinion of the Handwriting expert. While relying on the judgment of the Hon'ble Supreme Court in the matter of Lalit Popli v. Canara Bank and Others. 2003-II-LLJ-324: LNIND 2003 SC 216 : (2003) 3 SCC 583 : AIR 2003 SC 1796, learned counsel submitted that strict rules of evidence are not required in departmental proceedings.

17. It is the contention of the learned counsel for the Petitioner that the findings of the Inquiry Officer are not binding on the Disciplinary Authority. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on Disciplinary Authority as the decision making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry officer. But it is not necessary that the Disciplinary Authority should discuss materials in detail and contest the conclusions of the Inquiry Officer. Otherwise the position of the Disciplinary Authority would get relegated to a subordinate level. With regard to the aforesaid contention, learned counsel for the Petitioner relied on the judgment of the Hon'ble Supreme court in B.C. Chaturvedi v. Union of India and Others 1996-I-LLJ-1231 : LNIND 1995 SC 1036 : (1995) 6 SCC 749 : AIR 1996 SC 484.

18. He also relied on the judgment of the U.P. State Transport Corp and Others. v. A.K Parul (1999) 1 Scale 138 and contended that the imposition of proper punishment is within the discretion of the judgment of the Disciplinary Authority. He further contended that the learned Labour Court failed to appreciate that four charges had been fully proved against Respondent No.2 which as per the Appellate Authority's order dated 01.04.1995 had sufficient reason to impose penalty on the Respondent No.2.

19. Learned counsel for the Petitioner while relying on the judgement of the Hon'ble Supreme Court in the matter of State of A.P. v. S. Sree Rama Rao 1964-II-LLJ-150 LNIND 1963 SC 105 : AIR 1963 SC 1723 submitted that where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

20. It is the contention of Mr. Kapur that the Disciplinary Authority has very well followed the principles of Natural Justice while assessing the case of Respondent No.2 as per the judgment of the Hon"ble Supreme Court in the matter of Syndicate Bank v. The General Secretary, Syndicate Bank Staff Association 2000-I-LLJ-1630 : LNIND 2000 SC 715 : (2000) 5 SCC 65. It is his contention that the entire premise of the Impugned Award is based on the erroneous

presumption that the Enquiry Officer's report containing its findings were not conveyed to the Respondent No.2 and no opportunity was given to him to persuade the Disciplinary Authority to accept the favorable conclusion of the Inquiry Officer. He submitted that, admittedly the copy of enquiry proceeding, inquiry officer's report as well as the tentative reasons for disagreement with the Enquiry Officer were duly recorded by the Disciplinary Authority on 18.04.1994 and was further forwarded to Respondent No.2 on the same day itself to represent. Further, Respondent No.2 submitted its reply to the tentative reasons dated 18.04.1994 to the Disciplinary Authority. It is also pertinent to note that an opportunity of personal hearing was also accorded to Respondent No.2 on 13.08.1994 before the well-reasoned final decision was taken by the Disciplinary Authority on 25.10.1994. Hence, the finding of the learned Labour Court is erroneous wherein it observed that the Disciplinary Authority while differing with the findings of Enquiry officer, did not record tentative reasons for disagreement and sent the same to the workman to explain before recording his own findings and issuing show cause notice of proposed punishment.

21. The learned counsel while relying on the judgment of the Hon'ble Supreme Court in the matter of U.P. SRTC v. Hoti Lal 2003-II-LLJ-267 : LNIND 2003 SC 180 : (2003) 3 SCC 605 and Bank of India v. Degala Suryanarayana 1999-II-LLJ-682 : LNIND 1999 SC 580 : (1999) 5 SCC 762 : AIR 1999 SC 2407 held that the court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding.

22. Lastly, with regard to Backwages, it is the contention of the learned counsel for the Petitioner that the learned Labour Court while awarding backwages and directing reinstatement did not apply its mind to the question of entitlement to backwages and there was no rational basis whatsoever for awarding full backwages with interest. With regard to that he relied on the judgment of the Hon'ble Supreme Court in the matter of Haryana Urban Development Authority v. Devi Dayal (2002) 2 MLJ 153 : LNIND 2002 SC 191 : (2002) 3 SCC 473 : AIR 2002 SC 1313.

23. Further, he submitted that as per the Petitioner/Bank Rules, Respondent No.2 in case of discharge was entitled to all the

retirement benefits, which was duly accepted by the Respondent No.2 without reserving any right to challenge. Respondent No.2 has accordingly been paid viz;

a. During suspension- ₹ 3,41,385/-
b. Paid u/s 17 B- ₹ 5.39 Lacs.
c. Provident fund- ₹ 94,330/-.
d. Gratuity - forfeited as there was loss to the Bank.
e. Pension - not eligible as per rules i.e. not completed 20 years pensionable service i.e. 14 years and 10 months.

24. The Petitioner concluded its submissions by submitting that Respondent No.2 has already received subsistence allowance of ₹ 8,79,859/- without doing any work. However, in alternative the Petitioner submitted that the Respondent No.2 can be awarded compensation instead of reinstatement.

SUBMISSIONS OF RESPONDENT NO.2

25. Per Contra, Mr. Dinesh Kothari, learned counsel for Respondent No.2 while relying on the Impugned Award vehemently argued that the present petition is bereft of any merits and should be dismissed in toto.

26. The first contention raised by the learned counsel for Respondent No.2 was that as per catena of judgments of the Hon'ble Apex Court, this Hon'ble Court in judicial review under Articles 226 and 227 of the Constitution of India should not interfere with the Impugned Award. He further submitted that this Hon'ble Court can only interfere with the Award, if it is satisfied that Impugned Award is vitiated by any fundamental flaw. For the above contention, he relied on the judgment of the Hon'ble Supreme Court in KVS Ram v. Bangalore Metropolitan Transport Corporation LNIND 2015 SC 29 : (2015) 12 SCC 39 : AIR 2015 SC 998 and submitted that the present writ petition is not maintainable under the writ of Certiorari. He further submitted that, it will only be maintainable if the learned Labour Court has exceeded its jurisdiction or any illegality has been committed or it has exercised jurisdiction not vested with or if there is error apparent on the face of it.

27. The main premise on which Respondent No.2's case is based was that he was the Unit Secretary of S.B.I Staff Association and in

that capacity he had been challenging the various corrupt malpractices of the then Branch Manager R.K. Rastogi and other officials as well. Hence, the officers together hatched conspiracy to remove him from his services. He further averred that after the Inquiry Officer submitted its findings to the Disciplinary Authority and acquitted the Workman of all the major charges, the Disciplinary Authority much before issuing the show cause notice to Respondent No.2, recommended to the Chief Vigilance Officer ("CVO") for his approval that one increment of the Workman be reduced for two years but later told the representative of the Workman that the CVO did not agree to his proposal and directed him to remove the Workman from his service. However, when the workman's representative met the CVO and talked to him in this respect, he informed that the Disciplinary Authority had recommended for reduction of one increment for two years and that they have not suggested him for any higher punishment. Further, when the Workman's representative again met the Disciplinary Authority, he told that he cannot divulge any information in detail as there was a lot of pressure from the CVO on him to remove Respondent No.2 from his services.

28. In light of the afore-mentioned premise, learned counsel for Respondent no.2 submitted that the Disciplinary Authority discharged the findings of his own appointed officer who exonerated the Workman of all the major charges. Hence, the Disciplinary Authority did not apply his mind judiciously and followed the dictates of his superiors for malafide considerations.

29. Further, it was also submitted by the learned counsel that as the top management was biased towards the workman, therefore the biasness flowed to all channels of administration including the Enquiry Officer and the Disciplinary Authority. Hence, all of them acted arbitrarily against all ethics and cannons of natural justice.

30. Further, Mr. Kothari with regard to the Expert Opinion given by the Handwriting expert, Shri Ashok Kashyap, contended that the Disciplinary Authority blindly accepted the bogus reports of Shri Kashyap for malafide considerations despite the Enquiry Officer questioning the credibility and reliability of the handwriting expert. Further, the Handwriting expert of the Petitioner/Bank repeatedly confirmed that the writing of A-38 is that of the Workman, However, Shri B.K. Jain, officer MMGS-II, during the course of the enquiry proceedings on 29.06.1993, specifically admitted his writings on A-

38, but the biased Disciplinary Authority for malafide reasons accepted the concocted purchased report of the Handwriting expert and punished the Workman. Furthermore, it was proved beyond doubt in the Enquiry proceedings that the Handwriting expert compared all the documents with the so called admitted handwritings of Shri S.K.Taparia/Workman which was not his handwriting. The Branch Manager erroneously sent four office orders to the Handwriting expert which were in the hand writing of Shri Gopal Krishnan Atrey, Head clerk at the branch presuming it to be in the handwriting of Shri S.K.Taparia/Respondent No.2. The Handwriting expert compared the disputed documents with the handwriting of somebody else than that of Shri Taparia and the Disciplinary Authority for malafide reasons still accepted his report. Hence, while relying on the Impugned Award, learned counsel for Respondent No.2 submitted that it has been held in catena of judgments that expert opinion is a weak evidence, and it should be further corroborated. In the present case when the Inquiry Officer has also questioned its credibility, the Disciplinary Authority should have considered this crucial fact while discharging Respondent No.2 from its services.

31. The next contention raised by the learned counsel for Respondent No.2 is that despite the Inquiry Officer exonerating Respondent No.2 of all the major charges, the Disciplinary Authority for malafide reasons differed with the Enquiry Officer without writing any detailed findings for the same and without according Respondent No.2 any opportunity and discharged the Workman from his services. It is also the contention of the learned counsel for Respondent No.2 that the Disciplinary Authority did not pass speaking orders on various points and issues raised by the Workman in his letter dated 29.06.1994. Further, even though the Disciplinary Authority disagreed with the findings of the Inquiry Officer in respect of the charges (a-i) (a-ii), (b), (e) (g), it should have given its own findings on the basis of the available record for the Respondent No.2 to reply to it in detail. Hence, the Disciplinary Authority acted in complete violation of the principles of Natural Justice and this has also resulted in miscarriage of justice. It is also pertinent to note that the Inquiry Officer categorically observed in its report that the evidence produced by the defence i.e., Respondent No.2 outweighs that of the Petitioner"s side.

32. Lastly, learned counsel for Respondent No.2 submitted that Respondent No.2/Workman had put in more than 20 years of service with a good service track record, he was very active in the union

being office bearer/secretary and exposed various malpractices and malafide of the Petitioner/Bank due to which the management was annoyed. Hence, the present petition preferred by the Petitioner is without any merits and should be dismissed.

LEGAL ANALYSIS

33. This Court had heard the rival contentions of both the parties and perused the documents placed on record and judgments relied upon by the parties.

34. To examine whether the Petitioner resorted to "bias" against Respondent No. 2, it is necessary to see whether the Inquiry officer and the Disciplinary Authority acted arbitrarily to impose the punishment of discharge from service on Respondent No. 2.

35. From the perusal of the record, it reveals that the Inquiry Officer held that charges a(i) & (ii), b, e, g, as not proved. The findings of the Enquiry Officer on these charges are based on evidence excluding the evidence of the handwriting expert. The Inquiry Officer even went to the extent and observed that the opinion of the Handwriting Expert considerably lacks reliability and credibility on account of certain blunders committed by him during examination. Further, it was also observed that the Handwriting Expert, Mr. Kashyap has done his job hopelessly and his report lacks professional integrity. Pertinently, the Enquiry Officer also observed that the opinion of the Handwriting Expert should only be treated as a secondary evidence and reliance can only be placed if it is corroborated by some concrete evidence which is not there in this case.

36. After examining the documents on records, this Court is of the opinion that Respondent No. 2 has proved beyond reasonable doubt that some of the admitted/standard writing which were claimed by the Handwriting Expert to be in the writing of Respondent No. 2 were not in the hands of Respondent No.2. Following are some of the instances wherein the handwriting expert, Mr. Kashyap has claimed the documents to be in the handwriting of the Respondent/Workman, but in reality, it was of someone else:

> (a) The Petitioner brought on record office orders dated 28.10.1988, 29.10.1988, 14.09.1988 and 15.09.1988, all of the above orders were deemed as admitted writings of Respondent No.2 by Mr. Kashyap/handwriting expert. However, after perusing the examination-in-chief and cross-examination of Shri Gopal Krishnan Atriya, who has been working as head clerk with the Petitioner since 01.09.1987, he admitted that all the four office orders are in his handwriting except the lower portion of the office order dated 29.10.1988, which consists of two parts.
>
> (b) Further, the voucher marked as A-38 which is a credit voucher relating to the Account No. 6/2200 dated 01.03.1989 for ₹ 9500/-The handwriting expert treated the voucher as a standard/admitted writing of Respondent No.2. However, the examination-in-chief of Shri B.K. Jain, Officer, MMGS—II, who has admitted to preparing the voucher.
>
> (c) Pertinently, the Respondent No.2 produced 15 witnesses, who have appeared in the enquiry proceedings and owned up almost all the accounts/transaction alleged to have been opened/prepared by the Respondent/Workman.

37. It is also pertinent to note here that despite the Inquiry Officer passing very serious strictures against the handwriting expert, the Disciplinary Authority differed with him and stated as under:

> "I have perused the proceedings as well as cross examination of PW-4 Handwriting Expert and do not find him lacking confidence faltering or drifting from his written opinion anywhere and therefore, I do not agree with the view of Enquiry Officer that the report of Sh. Ashok Kashyap is unreliable and contain several distortions and have lost total creditability."

38. The main piece of evidence relied by the Disciplinary Authority was the opinion of the Handwriting Expert which is not a sterling piece of evidence as it is evident from the documents on record. It is true that rules of evidence do not apply to disciplinary proceedings but if prudence requires under Section 45 of the Evidence Act that expert opinion should be corroborated: then it is more so in disciplinary proceedings. The charge of forgery in the records is serious charge. The Disciplinary Authority should have taken every care to establish it by relevant material. When the evidence of the Handwriting Expert was shaky, the Disciplinary Authority shouldn't have gone ahead with a weak piece of evidence. There can be no

doubt about the proposition that the evidence of an Expert is a weak type of evidence, in the sense that, in itself, it is not clinching. Further, in absence of its corroboration, it could not be relied to hold that the charges on the basis of the shaky evidence of the Handwriting Expert was proved.

39. It is true that strict rules of evidence are not applicable to departmental proceedings. Howbeit, the only requirement of law is that the allegations against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at the finding upholding the gravity of the charge against the delinquent employee. Further, it is settled principle of law that mere conjectures and surmises cannot sustain the finding of guilt in departmental enquiry proceedings as well.

40. With regard to charge 'g', it has been held by the Inquiry Officer that no evidence has been led to prove the financial nature of the transactions between Respondent No.2 and Shri D.P.S Verma. However, the Disciplinary Authority on the contrary without proving the financial nature of the transaction between the parties held as follows:

> "As regards charge (g) the defence has neither denied nor has been in a position to establish that the payment of ₹ 10,000/- was received without consideration. Sh.D.P.S. Verma (presently under suspension) posted at the branch during the material time remained in need of funds and restored to unfair means to fulfil his requirements. The facts that most of the forged instruments have been passed for payment by Sh. Verma leads to the conclusion that Sh. Taparia was using him as a pawn or puppet and he was an active accomplice of Sh. Taparia. The disciplinary proceedings against Sh.D.P.S. Verma and other officers who were in collusion with Sh.Taparia has already been started by the Bank."

It is seen that no forged/fictitious instruments have been passed relating to Respondent No.2 which has also been held by the Enquiry Officer as well based on the evidence on record. Hence, This Court is in full agreement with the findings of the learned Labour Court with regard to the charges a (i) & (ii), b, e, g.

41. With regard to the issue of principles of Natural Justice, learned Labour Court held that "…it was obligatory on his part to record tentative reasons for disagreement and send the same to the workman to explain before him, before recording his own findings and issuing show cause notice of punishment. But it was not done in clear violation of principles of natural justice..."

42. At this juncture, it is relevant to mention that a close reading of the tentative findings of the Disciplinary Authority suggests that even though the Disciplinary Authority recorded its conclusions in respect of the charges which the Inquiry Officer held as not proved, however, the Disciplinary Authority has not recorded proper reasoning based on the evidence on record to justify its conclusions. Further, the Disciplinary Authority neither appears to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury, the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority.

43. The Inquiry Officer as well as the Disciplinary Authority held charges c, d, f and h, as proved. With regard to charge 'c', the views of the Inquiry Officer have also been concurred by the Disciplinary Authority. The Inquiry Officer has relied on the evidence of PW1 and Shri Pankaj Agarwal/DW4. The Inquiry Officer himself while disbelieving the statement of DW4 presumed and observed that he is not a 'good omen' but a simple businessman and seldom do not act without any interest or consideration. Shri Pankaj Kumar himself has stated that he has nothing to do with the shares and further has also stated that he did sign the allotment application without any contribution or interest. It is also interesting to note that the charge is with respect to the Respondent/Workman being engaged in trade/ business with various ***"customers"*** of the Petitioner Management. However, when the question was put to PW1/RK Rastogi, if he is aware about any of the bank customers with whom Respondent No.2 was engaged in trade/business. His answer to this was in negative. The evidence on which the Enquiry Officer and the Disciplinary Authority relied cannot by any stretch of imagination say that Respondent No.2 was engaged in trade/business with other ***"customers"*** of the bank. Even otherwise, it has been held in catena of judgments that merely holding of investment would not by itself lead to the inference that the person holding the business carries on business. Therefore, apart from showing investment, it is essential

to establish that the transactions have been named out in relation to the investment in the normal course of business and in case of shares held as investments it is essential to prove that the holder of the shares has been carrying on business in respect of those shares as otherwise the profit or loss on sale of the shares cannot be claimed as falling under the category of 'business' nor can expenses, computing the income.

44. With regard to charges d, f, and h, the learned Labour Court held as follows:

> "Similarly while recording his findings on charge '**D**' Inquiry Officer did not consider the explanation of the workman that "in fact that cheque was given to him by M/s. varun Trading Co. Hapur in lieu of the sale proceeds of some shares sold by him". Again while recording his findings on charge No. **'F',** inquiry Officer did not consider the contradictory statement of PW2 Shri S.K.Gupta that "the witness has however, added that as per his memory E.P.A has submitted a bill for going to Gaziabad or Delhi." Further on charge **'H'** the inquiry Officer mentioned that PW1 Shri R.K.Rastogi has deposed that "I do not know the source of S.K. Taparia's income. However, it is not proportionate to his salary income". Even then the inquiry officer presumed and held that "I, therefore, treat the charge as proved." Thus I find that the evidence on the record was not sufficient to prove even charges C, D, P and H which were found proved by the inquiry officer."

45. Learned Labour Court analysed the evidence adduced by the parties meticulously and came to the conclusion that "the inquiry proceedings conducted against the workman were neither fair nor proper and just, it was in clear violation of law and principles of natural justice. The punishment order therefore alongwith the appellate order suffers from various illegalities and cannot be legally sustained and it is liable to be quashed, issue no.1 is, therefore, decided in negative". The learned Labour Court further recorded that there was no request from the Petitioner for adducing any additional evidence to prove the misconduct before the learned Labour Court. In view of the same, the learned Labour Court proceeded to answer the reference and opined that the workman is entitled to be reinstated in the bank service w.e.f. the date of discharge i.e. 02.11.1994 with full back wages along with 9% interest thereon, with continuity of service and all other consequential benefits.

46. At this stage, it is expedient to refer to the celebrated judgment of the Hon'ble Supreme Court in the matter of Syed Yakoob v. K.S. Radhakrishnan, LNIND 1963 SC 228 : AIR 1964 SC 477 wherein it was categorically held that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. The relevant portion of the said judgment is reproduced hereinbelow:

> "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded

by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168]

47. In light of the above observations of the Hon'ble Apex Court, it is quintessential to state here that once learned Tribunal/Labour Court has exercised the discretion judicially, this Court can interfere with the award passed by the learned Labour Court, only if it is satisfied that the award of the learned Tribunal/Labour Court is vitiated by any fundamental flaws.

48. This Court is in full agreement with the findings of the learned Labour Court with regard to charges d, f and h. Even though Respondent No.2 has not brought on record any specific evidence to prove the biasness of the Officials of the Petitioner towards Respondent No.2. However, the conduct of the Petitioner towards Respondent No.2 with respect to dealing with the above charges levied on Respondent No.2 has spoken volumes.

49. Further, the learned Labour Court has also pointed out a very crucial point which is reiterated hereunder:

> "Besides, the Disciplinary Authority has passed the order of discharge under sub para (5)(e) sub para (10) (e) of para 521 of the Shastry Award which shows that the misconduct was condoned and the workman was merely discharged" without notice. But at the same time he did not record any reason as to why it was not found expedient to retain the workman any longer in service, as required in the said para of the Shastry Award. It also go to show that there was no evidence to prove

> the charges against the workman and the disciplinary authority arbitrarily held him guilty of the charge and punished and discharged him, illegally. I also find that the disciplinary authority also did not consider previous records/conduct of the workman and any other aggravating and extenuating circumstance which might exist before passing the punishment order. Hence it was in clear violation of the mandatory provisions of para 19.12(C) of the 1st Bipartite Settlement which is similar to that of the provisions of para 521(10)(C) of the Shastry Award and provides "In awarding punishment by way of disciplinary action the authority concerned shall take into account gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist."

50. The legal position is fairly well settled that the exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. The Disciplinary Authority clearly did not take into consideration any of the factors before discharging Respondent No.2 of its services. Hence, the punishment imposed by the Disciplinary Authority of discharging the Respondent No.2 from its services was illegal and bad in law.

51. In view of the discussions herein above, this Court is not inclined to interfere with the impugned Award. It is noted that Respondent No.2 expired on 01.06.2018 and his legal representatives were impleaded vide order dated 12.12.2018. In view of the same, the financial benefits of Respondent No.2 are to be calculated as if he was in continuous service of the Petitioner from 02.11.1994 till his date of death/date of superannuation whichever is earlier. The Petitioner is entitled to adjust the payment made to Respondent No.2 under Section 17-B of the I.D. Act, 1947 while calculating his financial benefits.

52. With these observations, the present writ petition is dismissed. No orders as to cost.■

Petition dismissed.

2023-II-LLJ-645 (All)
LNINDORD 2023 LUCK 74
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH
Coram:
Hon'ble Mr. Justice Pankaj Bhatia
WRIT –A No-5545 of 2022
19th April, 2023

Renu Chaurasiya .....Petitioner
Versus
Punjab and Sind Bank, Thru. General Manager/ Appelate Authority and Another
...Respondents

Misconduct-Major Penalty-Punjab and Sindh Bank Officers Employees (Conduct) Regulations 1981, Regulations 3 (1), 3 (3), 20(4) and 24-Disciplinary authority held Petitioner guilty of misconduct as per Regulations and awarded major punishment which was affirmed by Appellate authority, hence this petition-Whether charge leveled against Petitioner was contrary to mandate of Regulations 3 (1), 3 (3), 20(4) and 24-Held, in inquiry report, Inquiry Officer had gone through all transactions and did not record any finding that they were in respect of transaction 'concerning movable property' of value exceeding Rupees Twenty Five Thousand or said transactions were other than what was required to be disclosed in annual returns filed by officer concerned-Disciplinary authority failed to record finding as to how transactions reflected in statement of account violated Regulation 20(4) –Appellate order did not deal with any of submissions made by Petitioner, wherein, for first time Petitioner explained each and every financial transactions that happened in bank account to demonstrate that same did not relate to movable property held by Petitioner of value exceeding Rupees Twenty Five Thousand-Appellate authority passed order in casual manner without dealing with said averments and was unsustainable-Proceedings, initiated and culminated, against Petitioner leading to passing of impugned orders of punishment, did not demonstrate any

violation of Regulation 20(4) or for that matter violation of Regulation 3 (1) and 3(3) or 24-Nowhere did Petitioner ever admit guilt and, thus, it was incumbent upon disciplinary authority to record its findings on each such charge-Impugned orders punishing Petitioner with major penalty, unsustainable and quashed-Petition allowed.

ORDER

PANKAJ BHATIA, J.

Heard learned counsel for the petitioner as well as learned counsel for the respondent.

2. The present petition has been filed by the petitioner challenging the order dated 11.2.2022 whereby a major punishment was inflicted upon the petitioner as well as the appellate order dated 8.8.2022 whereby the departmental appeal preferred by the petitioner was dismissed.

3. The brief facts that emerge are that the petitioner was employed as an officer with the respondent-bank. On 14.11.2019, the petitioner was called upon to explain to tender an explanation in respect of the transactions in the statement of account of the petitioner for the period 2015 to 2019. The petitioner submitted a reply to the said explanation vide a letter dated 3.12.2019 stating that the father of the petitioner was suffering a paralytic attack and was on bed since 2009 and on account of medical and family exigencies certain amounts were borrowed from the family members.

4. It is argued, that after the reply was submitted by the petitioner, the petitioner was served with a show cause notice on I0.2.2021 wherein, it was alleged against the petitioner that the petitioner had made huge transactions of funds regularly in and from her account which are much higher than her salary while working as an officer for the period from 11.8.2015 to 23.1.2019 which would constitute a misconduct in terms of Regulation 3 (I), Regulation 3 (3) and Regulation 20 (4) read with Regulation 24 of the Punjab and Sindh Bank Officers Employees (Conduct) Regulations 1981 (hereinafter referred to as '1981 Regulations'). Along with the said chargesheet, the statement of account of the petitioner containing the transactions was appended as the proposed document to be

relied upon to substantiate the charges. The single charge leveled against the petitioner is as under:-

> "Ms Renu Chaurasiya (PF Code: R16432), Officer is charged for Major Penalty Proceedings under Regulation 6 of the Punjab & Sind Bank Officer Employees' (Discipline & Appeal) Regulations, 1981 (as amended time to time) for making huge transactions of funds regularly in and from her accounts much higher than her salary income while working as Officer at branches Rajajipuram Lucknow (L0779) from 11.8.2015 to 20.09.2015, Indra Nagar Lucknow (L0802) from 21.09.2015 to 22.01.2019 & Gomti Nagar Lucknow (L0917) from 23.01.2019 to till date under Lucknow zone as per articles of charges (ANNEXURE-I) based upon Statement of Allegations (ANNEXURE-II). A list of documents by which article of charges are proposed to be substantiated is also enclosed as per ANNEXURE III."

5. The petitioner moved an application dated 8.3.2021 stating that the chargesheet was vague and lacks clarity and the chargesheet is not accompanied by the list of documents and the list of witnesses and prayed that the relied upon documents be supplied so as to enable the petitioner to give a proper reply.

6. In response to the said letter, the respondent-bank gave a reply on 31.3.2021 stating that complete set of documents as mentioned in the list of documents (Annexure No. 4) (wrongly referred as Annexure No. 4 and appears to be Annexure No. 3) in the chargesheet dated 10.2.2021. It was denied that at that stage no list of witnesses was annexed and, thus, a plea taken was found to be unfounded

7. The petitioner once again wrote a letter stating that the charges are vague and the petitioner is unable to understand the charges. As the petitioner did not submit any reply, in fact, took a ground that the petitioner was being victimised for no fault of hers, an Inquiry Officer was appointed to inquire into the allegations.

8. The Inquiry Officer submitted his findings on 3.1.2022 recording that on the basis of documents marked as Management Exhibit- I to Management Exhibit 10311, the allegations with regard financial transactions as evidenced in the statement of account were true. With regard to each transaction, the Inquiry Officer recorded that the amount was deposited in her account and as the chargesheeted

officer, the petitioner herein did not give any justification/reason or the source of cash so deposited in her account, he proceeded to record that the transaction remained unexplained by the chargesheeted officer. A similar finding was recorded in respect of each financial transaction which appeared in the statement of account of the petitioner. After recording the same, the Inquiry Officer recorded that on the perusal of management exhibits, it was clear that the transactions in various accounts of the petitioner are much higher than the salary income receipt of the petitioner. It further records that from the assets and liability statement of the C.S.O for the corresponding period do not show any other sources which can justify the unreasonably high transactions in her account. It further records that the C.S.O. has not mentioned any details pertaining to the said transaction in her assets and liability statements of the relevant papers and after recording the same, held that the allegation no. 1 is proved in totality.

9. The said inquiry report was forwarded to the disciplinary authority, on receiving the said report the disciplinary authority issued a show cause notice dated 19. 1.2022 calling upon the petitioner to submit a written comment on the findings of the Inquiry Authority. In reply to the same, the petitioner sent a reply on 27.1.2022 taking a ground that the petitioner was unable to understand the charge which was framed against the petitioner, she also took a ground that the relied upon document and the list of witnesses were never provided to the petitioner as a result whereof the petitioner could not understand the charges and, thus, the petitioner was unable to answer. The petitioner also took a ground that the transactions referred to were the transactions in between the petitioner and her family members after the said reply was filed, the disciplinary authority proceeded to pass an order on 11.2.2022 wherein, the report of the Inquiry Officer was considered. The disciplinary authority consider the findings recorded by the Inquiry Officer in respect of each transaction and recorded that the petitioner had been making huge transactions of funds through the various accounts and despite giving opportunities to explain, the petitioner was reluctant and has not furnished any justification/ reason in that regard. It further recorded that the salary income receipt by the petitioner from the bank does not commensurate with the amount involved in the corresponding period and went ahead to record that the petitioner was guilty of the misconduct as per the regulations of 1981 specially Regulation 3 (1), Regulation 3 (3) and Regulation 20 (4) read with Regulation 24 and after holding the petitioner guilty proceeded to award major punishment of reduction of four increments to a lower stage in time

scale of pay for a period of 2 years. It further ordered that she will not earn increment of pay during the period of such reduction and on expiry of this period the reduction will have the effect of postponing the future increments of her pay, the said punishment was awarded under Regulation 4 (F) of the Discipline and Appeal Regulations 1981 as amended.

10. Challenging the said order of punishment awarded to the petitioner, the petitioner filed a comprehensive appeal before the appellate authority. In the said appeal, the petitioner denied the allegation and pleaded that the petitioner could not be held guilty of misconduct. It was submitted that all the transactions referred to were in between the petitioner and her family members and details with regard to each deposit was specifically mentioned in paragraph 14 of the appeal. The petitioner also took other grounds in the appeal preferred by the petitioner. The appellate authority passed an order dated 8.8.2022 dismissing the appeal. Both the said orders are impugned in the present writ petition.

11. Sri Prashant Kumar Singh, learned counsel for the petitioner argues that in terms of the regulations under which the petitioner was working, the petitioner was under obligation to disclose the assets and liabilities in the prescribed form along with the format annexed to the said form, one such format is contained in Annexure No. 13 to the writ petition. In the light of said submission, it is argued that it was incumbent upon the petitioner to disclose the carry home salary of the petitioner and apart from that, the petitioner was obliged to disclose details such as rent, receipt, interest/dividend, other receipts such as disposal of movable/immovable assets, gifts, encashment of NSE, NSS/PPF/FDRs/LIC, mutual fund, etc., and while filling the said form the petitioner had disclosed 'NIL'. The petitioner was also under an obligation to disclose the details of immovable properties and once again the petitioner disclosed the same as NIL.

12. The counsel for the petitioner draws my attention to the proceedings before the Inquiry Officer wherein the petitioner had made a specific statement that in terms of Regulation 20 (4) of the 1981 Regulation, it was an obligation of the petitioner to disclose every transaction 'concerning movable property' owned or held by the petitioner, if the value of such properties exceeds ₹ 25,000/- and the petitioner never owned any movable property of ₹ 25,000/- or more in between the financial year 2016 and 2020. He draws

my attention to that Regulation 3(1), 3 (3) and 20 (4) read with Regulation 24 are quoted hereinbelow:-

"Regulation 3 (1):
Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee.

Regulation 3 (3):
No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior.

Provided wherever such directions are oral in nature the same shall be confirmed in writing by his superior official.

Regulation 20 (4):
Every officer employee shall report to the Competent authority every transaction concerning movable property owned or held by him either in his own name or in the name of a member of his family if the value of such a property exceeds ₹ 25,000/-

Provided that the previous sanction of the competent authority shall be obtained if any such transaction is-

(a) With a person having official dealings with the officer employee or
(b)Otherwise than through a regular or reputed dealer.

Regulation 24:
A breach of any of the provisions of these regulations shall be deemed to constitute misconduct punishable under the Punjab & Sindh Bank Officer Employees' (Discipline & Appeal) Regulations, 1981."

13. The counsel for the petitioner argues that in terms of the mandate of Regulation 20 (4), the employee is liable to report every transaction concerning to movable property owned or held by him either in his own name or in the name of a member of his family if the value of the property exceeds ₹ 25,000/-. He argues that in the entire charge-sheet there is no allegation of the petitioner failing

to make a disclosure in respect of a movable property belonging to the petitioner or her family member. He further argues that in the form which was required to be filled, it was specifically stated that the statement need not include the transactions which have been entered into by the spouse or any other member of the family of the officer employee out of his own funds including stridhan, gifts, inheritance etc as distinct from the funds of the officer employee. He argues that that the notes appended to the form which are required to be filled itself made it mandatory that all the transactions both purchase and sales of ₹5,000/- or more are required to be reported and in fact the investment above ₹ 25,000/- are required to be reported as per Annexure No.1. The notes as appended to the form which is required to be filled by the officer concerned which is being reproduced here-in-below:-

"The officers are required to intimate only the changes during the year, wherever, a particular set has already been reported in any of the pervious years. All columns are required to be filled in and the details, wherever required, may be given by way of separate Annexure. Reference to the sanctions obtained from the competent authority shall be made against the relative transaction.

All the transactions, both purchases and sales, of ₹5000/- or more are required to be reported. So far as investment in shares, securities, debentures, mutual fund scheme etc. is concerned, even transactions of values of less than ₹ 5000/- are required to be reported. However, if the total transactions in such investments exceed ₹ 25,000/- during the financial year, intimation is required to be given as per Annexure-I.

The statement need not include transactions which have been entered into by the spouse or any other member of the family of the officer employee out of his/her own funds including stridhan, gifts, inheritance etc. as distinct from the funds of the officer employee.

I hereby declare that I have read and understood the Regulation 14 to 20 of the PSB Officer Employees' Conduct Regulations-1981 and the particulars in the statement furnished here-in-above are in conformity with the said regulations and are complete and correct as of date and to the of my knowledge and belief."

14. In the light of said submission, he argues that the charge-sheet never alleged that the petitioner did not make any true disclosures as are required to be made and in terms of Regulation 20(4), transactions other than the one referred to in the said regulation are not required to be disclosed and as such the petitioner could not be held guilty on that account. He next argues that in any event, the petitioner never admitted the guilt and thus, it was incumbent upon the bank in terms of the Discipline and Appeal Regulations to establish the charges leveled based upon documentary or oral evidence. In the present case, it is argued that that the charge has been held to be proved against the petitioner solely based upon the statement of account and without there being any other evidence to establish the violation of Regulation 20 (4). He further argues that in the appeal, all the transactions is the statement of account of the petitioner were duly explained and it was the duty of the appellate authority to have recorded a finding in respect of the grounds taken in the appeal whereas the appellate order concludes the proceedings without recording any finding in respect of the grounds as raised by the petitioner.

15. Learned counsel for the petitioner lastly draws my attention to the Discipline and Appeal Rules which provide for the manner in which the proceedings are to be concluded in the event of a major penalty being imposed which is contained in Regulation 6. He draws my attention to the Regulation 6 which prescribes that in the event the officer does not accept the guilt, it is incumbent upon the Inquiry Officer to record a finding of guilt in respect of each charge on the basis of the evidence. He also draws my attention to the employees Conduct Regulations specifically Regulation 3 (1), 3 (3), 20 (4) and Regulation 24 which are quoted hereinabove to argue that, even if for the sake of arguments, all the allegations leveled are taken to be correct, there is no material to establish that there was violation of Regulation 20 (4) as the disclosure/reporting relate only in respect of 'transactions of movable property' which exceed ₹ 25,000/-.

16. Learned counsel for the petitioner has placed reliance on the revision and judgement of this Court in the case of Ramesh Mohan Shukla v. State of U.P. and Others 2015 (7) ADJ 722 (DB) in particular places reliance on paragraph 4 of the said judgement which holds that irrespective of the defense the burden of proving the charge is on the Inquiry Officer. He further places reliance on the judgement of this Court in the case of Mahesh Narayan Gupta v. State of U.P.

and Others 2011 (5) ADJ 177 which is also to the same effect that the burden of proving the charge is on the employer. He next places reliance on the judgement of the Supreme Court in the case of Union of India v. Gyan Chand Chattar 2009-IV-LLJ-321 : LNIND 2009 SC 1359 : (2009) 12 SCC 78 where he places reliance on paragraph 35 to argue that the statutory rules are to the followed strictly and the charges should be specific and no inquiry can be sustained on vague charges and that every act or omission on the part of the delinquent cannot constitute a misconduct, paragraph 35 is quoted here-in-below:-

> "In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct."

17. Learned counsel for the petitioner next places reliance on the judgement of the Supreme Court in the case of State of U.P. and Others v. Saroj Kumar Sinha (2010) 3 MLJ 742 : LNIND 2010 SC 136 : (2010) 2 SCC 772 : AIR 2010 SC 3131 wherein the manner of conducting the inquiry was laid down emphasis by the Supreme Court, paragraph 27 to 30 are quoted here-in-below:-

> "A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex-parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to

> establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.
>
> An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/government. His function is to examine the evidence presented by the Department even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.
>
> Apart from the above, by virtue of Article 311(2) of the Constitution of India the department enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.
>
> When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

18. Learned counsel for the respondent-bank, on the other hand, defends the order by arguing that the petitioner never filed any objection to the charge-sheet, the petitioner never gave any statement with regard to such huge financial transactions which are reflected in the statement of account and, thus, the petitioner failed to raise the objections at the time when they were required

to be raised. It is argued that an officer who is drawing a salary of ₹ 4 lakhs and all, has incoming transactions in excess of 70 lakhs in her account and outgoing transactions of ₹ 40 lakhs in her account, itself demonstrates that the petitioner was receiving such huge amounts without making the necessary disclosures to the bank which according to the counsel for the respondent-bank is a clear violation of the Regulation of 1981. He further argues that in terms of the disclosures that were required to be made by all the officers, the details are required to be stated. He further argues that the emphasis of the petitioner that the details as are specified in the form pertaining to the gifts etc. are to be disclosed is worthy of rejection as the said heads are only examples and does not contain the exhaustive disclosures which are required to be made. He further argues that the Inquiry Officer after giving adequate opportunity to the petitioner recorded the findings of guilt in respect of the charge as framed against the petitioner and this Court in exercise of jurisdiction under Article 226 cannot sit over the said order as an appellate authority. He relies upon a judgement of the Supreme Court in the Case of Civil Appeal No.8071 of 2014 in re: State of Karnataka v. M Gangaraj, therein Hon'ble Supreme Court had the occasion to consider this act of interference in disciplinary proceedings under Article 226 of the Constitution of India and after placing reliance on various judgements including the judgements of B.C. Chaturvedi v. Union of India, followed the same and recorded that judicial review is confined to decision making process. He lastly argues that the appellate authority in its findings had recorded that the petitioner was guilty out of own disclosure of the huge transactions and it was not required by the appellate authority to deal with each and every submission in respect of each and every transaction in the statement of account as has been argued by the counsel for the petitioner. In the light of the said submission, it is argued that the petition lacks merit and liable to be dismissed. He further argues that in terms of the mandates Regulation 20 (4), it was incumbent upon the officer to disclose all the financial transactions as reflected in the statement of account which the petitioner had not done and in any case, should have come out clean in respect of each transaction, while filing the reply to the charge-sheet which the petitioner has failed to do and has not even disclosed the same during the course of the inquiry.

19. In rejoinder, the counsel for the petitioner argues that before issuance of chargesheet, a notice was served on the petitioner and

the petitioner, in reply to the said notice had specifically given the details in respect of the transactions in the statement of the account of the petitioner.

20. Considering the statement made at the bar and as recorded above, this Court is to consider as to whether the charge leveled against the petitioner is contrary to the mandate of Regulation 3 (1), Regulation 3 (3), Regulation 20(4) and Regulation 24 of the Employees Conduct Regulations 1981. The sole charge against the petitioner was of making huge transactions of funds regularly in and from her accounts much more than her salary income while working as an officer. In terms of the Regulation 20(4), every officer employee is bound to report to the competent authority for every transaction concerning to movable property owned or held by him/her either in his own name or in the name of members of his family if the value of the property exceeds ₹ 25,000/-. Thus, it is clear that the Regulation 20(4) is confined to disclosure of transactions concerning movable property owned or held by him/her, if the value of the property exceeds ₹ 25,000/- the regulation does not prescribe for disclosure of all the financial transactions taking place in the account of the officer concerned. This is also fortified by the forms prescribed for filling, by each and every officer concerned, one such form requiring the disclosures to be made is annexed as Annexure No.13 to the writ petition, the same is qualified by the notes which do not provide for disclosure of the transactions entered into by the spouse or other members of the family by the officer employee out of his/her own funds. Thus to carry home the charge of violation of Regulation 20(4), it was incumbent upon the petitioner to allege and substantiate that the transactions made and reflected in the statement of account of the value exceeding ₹ 25,000/- and were not in respect of transactions which have been entered into by the spouse or in the name of other member of the family of the officer employee out of his/her own funds. The charge leveled against the petitioner only alleged that huge transactions were made in the bank accounts which are much higher than the salary. On a plain reading, the said charge does not attract any infraction of Regulation 20(4) of the regulations. In the absence of any charge to the effect that the transactions reflected in the statement of account were in respect of movable property of the value exceeding ₹ 25,000/- and other than the transactions which are not bound to be disclosed, there was no occasion for the petitioner to give any reply to the said charge as on the face of it, the charge did not reflect any

violation of Regulation 20(4). Thus, to that extent, the submission of the counsel for the petitioner that the charge should be specific and not vague is bound to be accepted.

21.In the inquiry report, the Inquiry Officer has gone through all the transactions and did not record any finding that they were in respect of transaction 'concerning movable property' of value exceeding ₹ 25,000/- or that the said transactions were other than what is required to be disclosed in the annual returns filed by the officer concerned. The disciplinary authority has also failed to record any finding as to how the transactions reflected in the statement of account violated Regulation 20(4). The appellate order clearly does not deal with any of the submissions made by the petitioner, wherein, for the first time the petitioner has specifically explained each and every financial transactions that it happened in the bank account to demonstrate that the same did not relate to movable property held by the petitioner of a value exceeding ₹ 25,000/-. The appellate authority has passed the order in a casual manner without dealing with the said averments and, thus, is clearly unsustainable.

22. On the analysis of the proceedings, initiated and culminated, against the petitioner leading to the passing of the impugned orders of punishment, the same do not in any way demonstrate any violation of Regulation 20(4) or for that matter violation of Regulation 3(1) and Regulation 3 (3) or Regulation 24 of the employees Regulations. The proceedings are further bad in law in as much as nowhere did the petitioner ever admit the guilt and, thus, it was incumbent upon the disciplinary authority to record its findings on each such charge in terms of Regulation 4 of the Discipline and Appeal Regulations 1981 read with Regulation 8 of the 1981. For all the reasons recorded above, the impugned orders punishing the petitioner with a major penalty, are clearly unsustainable and are liable to be quashed. The impugned orders dated 11.2.2022 and 8.8. 2022 are quashed. I am not remanding the matter as the charges leveled against the petitioner are as vague as they can be and subjecting the petitioner to give a reply to such vague charges would be further embarrassing the petitioner.

23. The writ petition is allowed. No order as to costs. Consequential benefits shall follow in favour of petitioner.■

Petition allowed.

2023-II-LLJ-482 (MP)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Coram:

Hon'ble Mr. Justice Maninder S.Bhatti

W.P.No 9930 of 2017

17th November, 2022

Mohanlal Gupta, S/o. Shri B.L.Gupta, Madhya Pradesh ...Petitioner

Versus

Madhyanchal Gramin Bank, Through its Chairman Head Office, Madhya Pradesh and Another ...Respondents

Benefits-Leave Encashment-Maharashtra Gramin Bank (Officers and Employees) Service Regulations, 2010, Regulation 67-Petitioner-employee sought for directing Respondents to release benefit of earned leave encashment with interest of 12% per annum from date of superannuation, hence this petition-Whether, Petitioner entitled for benefit of earned leave encashment with interest of 12% per annum- Held, provisions of Regulation-67 of Regulations were not plain and completely silent about nature of penalties, which result in cessation of master-servant relationship-Interpretation of Regulation-67 of Regulations, which was favourable to employer, was not permissible, when such interpretation deprives employee from his right to leave encashment-Employer could not be permitted to exercise discretion, when disciplinary authority itself arrived at categorical finding that there was no financial loss to Bank-Impugned order, quashed-Respondents directed to release amount of earned leave encashment to Petitioner within certain period-Petition allowed.

ORDER

The petitioner has filed this petition while praying for following reliefs:-

"7.(i) The Hon'ble Court may be pleased to call the entire record of the petitioner pertaining to the earned leave encashment.

(ii) The Hon'ble Court may be pleased to set aside the impugned order dated 23-05-2015.

(iii) The Hon'ble Court may direct respondents to release the benefit of earned leave encashment to the petitioner within a period of 60 days and with the interest of 12% per annum from the date of superannuation.

(iv) Any other relief this Hon'ble Court deems fit and proper under given facts and circumstances of the case may also be granted in favour of the petitioner along with cost of litigation throughout."

2. The contents as elaborated in the petition reveal that the petitioner, who was working with the respondent/Bank, as Officer Category-II, after disciplinary inquiry, vide order dated 22-04-2014, was removed from service and the said order of removal was passed just before the scheduled date of superannuation i.e. 30-06-2014. After the said order, the petitioner made representation to the respondents to release the benefits, which are admissible to the petitioner upon superannuation.

3. The respondents though, released the gratuity to the petitioner but, did not release the earned leave encashment and the same was withheld. The petitioner then submitted representation dated 03-07-2014 but, the said representation was declined vide letter dated 10-07-2014 (Annexure P/3). Thereafter, the petitioner submitted another representation dated 15-07-2014 (Annexure P/4), the same was again declined vide impugned order dated 23-03- 2015. Thereafter, an appeal was also preferred by the petitioner vide memo contained in Annexure-P/6 but, the petitioner was not extended the benefit of encashment of privileged leave. Therefore, seeking quashment of order dated 23-03-2015, this petition was filed by the petitioner with a further relief to direct the respondents to confer the benefit of earned leave encashment with interest.

4. The counsel for the petitioner contends that the service

conditions of employee of the petitioner are governed by the Regulations which are contained in Annexure-P/8. It is the submission of the counsel for the petitioner that Regulation -61 of the Regulations provides for privilege leave. Regulation-67 of Regulations, provides for lapse of leave. In terms of Regulation-67 of Regulations, when an employee of the Bank ceases to be in service, he is entitled to be paid all allowances and pay for the period of privilege leave at his credit and therefore, submits that there is no clause in Regulation-67, which deprives the petitioner from availing the benefit of leave encashment. It is submitted by the counsel for the petitioner that the petitioner had number of leaves to his credit and therefore, despite the order of removal, which is contained in Annexure- P/1 dated 22-04-2014, the petitioner could not have been deprived of the benefit of leave encashment. It is also contended by the counsel for the petitioner that the amount of gratuity has been released to the petitioner and therefore, the respondents could not have withheld the leave encashment under the garb of Regulation-67 of the Regulations, which are contained in Annexure-P/8.

5. The counsel while placing reliance on the decision of the Apex Court in the case of State of Jharkhand and Others. v. Jitendra Kumar Srivastava and Others. LNIND 2013 SC 746 : (2013) 12 SCC 210 : AIR 2013 SC 3383 submits that the present petition deserves to be allowed inasmuch as, the Apex Court in the case of State of Jharkhand and Others v. Jitendra Kumar Srivastava and Others (supra) has held that terminal dues like pension, gratuity or leave encashment cannot be withheld in absence of any statutory provisions to do so. It is the further contention of the counsel that the pari materia provisions of Regulations-61 and 67 have been incorporated in Maharashtra Gramin Bank (Officers and Employees) Service Regulations,2010 and the High Court of Mumbai(Aurangabad Bench) in WP No. 1347/2016 (Ashok and Others. v. Chief Secretary, Union of India, Banking Division, New Delhi and Others.) decided on 17-02-2017, while dealing with the case of removal itself, held that there is no provision in the regulation, where the claim of the petitioner for leave encashment can be withheld. It is also contended by the counsel that the order passed by the Mumbai High Court in the case of Ashok and Others v. Chief Secretary, Union of India, Banking Division, New Delhi and Others (supra), was assailed by the Bank by submitting Special Leave Petition before the

Supreme Court vide Appeal (Civil) No. 19888/2017, which was also dismissed. The counsel while relying upon the decision of Indore Bench of this Court in WP No. 18249/2018 (Mukund Hegde v. Narmada Jhabua Gramin Bank and Another), submits that this court directed the respondents therein to take into consideration the petitioner's grievance regarding leave encashment. The counsel for the petitioner also while placing reliance on the decision of the Division Bench in WA No. 240/2019 (Narmada Jhabua Gramin Bank Through Chairman v. Mukund) in the same case, which was a case of compulsory retirement has held that the employee, who has been compulsorily retired, is entitled for leave encashment inasmuch as, Regulations-61 & 67, nowhere provides that if an employee is compulsorily retired, he shall not be entitled for leave encashment. Accordingly, the counsel submits that in view of the aforesaid position of law, the present petition deserves to be allowed and the petitioner is entitled for relief as prayed for.

6. Per contra, learned counsel for the respondents Shri Vikram Johri submits that the present petition is grossly mis-conceived. It is the contention of the counsel that encashment of privilege leave cannot be claimed as a matter of right. The counsel contends that there are statutory rules, which govern the said field and therefore, the encashment of leave, is only permitted within the four corners of the provisions of Regulation-67, which have been brought on record as Annexure-P/8. It is contended by the counsel that by virtue of Regulation-67, all leaves stand lapsed in the event of death of an Officer/employee, or if, he ceases to be in service of the Bank. It is contended by the counsel that such cessation further has exception which are elaborated in Regulation-67. Shri Johri contends that in terms of provisions of Regulation-67, if an employee, whose services have been terminated owing to retrenchment, he shall be paid, pay and allowances for the period of privilege leave at his credit. Shri Johri submits that Regulation-67, does not entitle an employee for leave encashment, if he has been removed from service on the allegations of mis-conduct. Shri Johri further submits that in the present case, the petitioner has been extended the benefit of gratuity in terms of Regulation-72 inasmuch as, in terms of proviso contained in Regulation-72, the case of the petitioner was considered by the employer and as the petitioner, against whom allegations of financial loss to bank were levelled against the

petitioner and petitioner had subsequently, indemnified the bank thus, invoking the powers contained in proviso to Regulation-67, the gratuity amount was paid to the petitioner.

7. It is contended by Shri Johri that the order of removal contained in Annexure-P/1 dated 22-04-2014 reveal that allegations of financial irregularities and other mis-conducts were levelled against the petitioner and disciplinary authority while passing the order of removal observed that financial loss which was sustained by the Bank, on account of petitioner's mis-conduct, was later on indemnified by the petitioner and therefore, while taking a lenient view penalty of removal was imposed, which was initially proposed to be a penalty of dismissal. Thus, submits that the petitioner cannot claim the benefit of leave encashment, on the ground that as the gratuity has been paid to the petitioner, he is entitled for the leave encashment as well. Shri Johri, submits that Regulation-67 has been taken into consideration by this Court in WP No. 16345/2014 (Bhoop Narayan Sharma v. Central Madhya Pradesh Gramin Bank) and while dealing with a case, where the employee concerned was imposed a penalty of compulsory retirement, who claimed benefit of leave encashment, this court observed that the Regulation-67, does not save the cases of termination and compulsory retirement and therefore, the petitioner therein, who was compulsory retired, after departmental inquiry, was not entitled for leave encashment.

8. Shri Johri, has further placed reliance on the decision of Supreme Court in the case of State of Jharkhand and Another v. Govind Singh LNIND 2004 SC 1208: (2005) 10 SCC 437 : AIR 2005 SC 294 and it is submitted that when the words of statute are clear, plain or unambiguous, the courts are bound to give effect to that meaning, irrespective of consequences. Since, in the present case, Regulation-67, does not leave any scope for extension of benefit of leave encashment to an employee, who has been removed from service after disciplinary inquiry, such a relief cannot be extended to the present petitioner.

9. Heard the rival submissions and perused the record.

10. In order to deal with the controversy, it would be apposite to first deal with the regulations which deal with service conditions of the petitioner. As the issue in question pertains to

Regulations-61 & 67, they are being reproduced herein :-

"61. Privilege Leave :- (1) An officer or employee shall be eligible for privilege leave computed for one day for every 11 days of service on duty:

Provided that no privilege leave shall be availed of before the completion of 11 months of service on duty at the joining of his service.

(2) The period of privilege leave to which an officer or employee is entitled at any time shall be the period which he has earned less the period availed of.

(3) An officer or employee on privilege shall be entitled to full emoluments for the period of leave.

(4) Privilege leave may be accumulated upto 31st December, 1989 for an aggregate period up to 180 days and from 1st January, 1990, the privilege leave may be accumulated up to not more than 240 days.

(5) An application for privilege leave shall be submitted by an officer or employee one month before the date from which such leave is required.

(6) The application which does not satisfy the requirement of sub-regulation (5) may be refused without assigning any reason:

Provided that if the Competent Authority is satisfied that such requirement was not possible, he may, at his discretion, waive the requirement."

67. Lapse of Leave :- All leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank:

Provided that where an officer or employee dies in service, there shall be payable to his legal representatives, sums which would have been payable to the officer or employee as if he has availed of the privilege leave that he had accumulated at the time of his death subject to sub-regulation (4) of regulation 61:

Provided further that where a staff retires from the service of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to sub-regulation (4) of regulation 61:

Provided also that in respect of the employee where his services are terminated owing to retrenchment, he shall be paid pay and allowances for the period of privilege leave at his credit."

11. A perusal of the aforesaid Regulation-61 shows that an employee is entitled for the privilege leave computed for one day for every 11 days of service on duty and it is also mentioned that the period of privilege leave to which, an officer/employee is entitled at any time shall be the period, which he has earned less the period availed of. It is also mentioned in the Regulation-61, that an officer or employee on privilege shall be entitled to full emoluments for the period of leave. Therefore, the right to leave is a statutory right, which is made available to an employee on the strength of statutory provisions. The privilege leave as defined in Regulation-61, can be availed of by an employee by performing the duties for a particular period, which are described in Regulation-61. It is also clear that for period of privilege leave, an employee is entitled for "full emoluments". Therefore, the benefit of privilege leave is to an employee is based on a notional situation, as if the employee on that particular day of leave, has performed his duty. Therefore, Regulation-61 provides that an employee shall be entitled for the "full emoluments" for the period of leave.

12. In service jurisprudence, an employee becomes entitled for the salary/emoluments or allowances etc, only upon performing the duties in the realm of master-servant relationship, which flow from the rules governing service conditions. Thus, an employee, who wish to avail the benefit of privilege leave encashment, is required to first perform the duties for every 11 days and then, he becomes entitled for one day of privilege leave. Therefore, an employee, who is desirous to avail privilege leave, first has to perform duty for the fixed stipulated period and then only he

becomes entitled for the privilege leave of one day and the said privilege leave may be accumulated for not more than 240 days and thus, during the service tenure, an employer as well as employee are well aware that an individual employee, has to perform his duties for certain stipulated days and thereby, he earns leave to his credit.

13. Regulation-67, which deals with the lapse of leave provides that all leave shall lapse on the death of an officer or employee or if he ceases to be in the service.

14. An exception has been carved out in the 3th proviso to Regulation-67, which provides that in respect of the employee, where his services are terminated owing to retrenchment, he shall be paid, pay and allowances for the period of privilege leave at his credit. Regulation-67 does not elaborate the different eventualities of cessation. Regulation-67, also does not deal with different penalties, which results into cessation. The third proviso of the Regulation-67, only deals with the termination owing to retrenchment and it is provided in the said proviso that in the cases of termination owing to retrenchment, an employee will be entitled for leave encashment.

15. In order to deal with the petitioner's claim with regard to leave encashment, it is first necessary to evaluate as to whether leave encashment is property of the petitioner are not.

16. Regulation-61 in unequivocal terms reflect that an employee earns leave upon performance of duty for certain period of days and therefore, while performing his duties in terms of Regulation-61, an employee becomes entitled for the privilege leave, which in-turn entitles him for the entire emoluments, as if he was on duty. Therefore, such a privilege leave, which the employee has earned, becomes his property and deprivation from such a property, in absence of statutory rule not permitted. A question regarding pension, came up before the Hon'ble Supreme Court in the case of D.S. Nakara and Others. v. Union of India 1983-I-LLJ-104 LNIND 1982 SC 208 : (1983) 1 SCC 305 : AIR 1983 SC 130 wherein the Apex Court in paragraph-20 has held as under:-

> "31. From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Art. 309 and clause (5) of Art. 148 of the Constitution ; (ii) that the pension is not an exgratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to requirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure."

17. The Apex Court held that pension is a right and payment of the same does not depend upon the discretion of the government subject to statutory rules. The Apex Court has also referred to an earlier decision of the Apex Court in the case of Deoki Nandan Prasad v. State of Bihar and Others 1972-II-LLJ-557 : LNIND 1971 SC 276 : (1971) 2 SCC 330 : AIR 1971 SC 1409.

18. Therefore, the benefits like pension and leave encashment are earned by an employee and therefore, once such benefit are earned, they become property of an employee and if an employee is deprived of such a property, there has to be specific provision in the statutory rules governing the field.

19. The Apex Court in the case of State of Jharkhand and Others v. Jitendra Kumar Srivastava and Others (supra), while dealing with the provisions of Article 300-A of Constitution of India held that the right to property cannot be taken away without due process of law. The Apex Court has held in paragraph-14 as under :- "

> 14. Article 300 A of the Constitution of India reads as under:
>
> 300A. Persons not to be deprived of property save by

authority of law. - No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

20. In view of the aforesaid enunciation of law, an employee has a right for leave encashment, which in view of enunciation of law laid down by the Apex Court becomes his property upon earning the same in terms of statutory provisions and therefore, such a right can only be curtailed by another statutory provision empowering the employer to forfeit or withhold the same.

21. In the present case, the stand of the employer is that in terms of Regulation-67, in cases of removal, an employee is not entitled for leave encashment and the further stand of the employer in the present case is that a case of removal is one of the eventuality, on account of which, an employee ceases to be in service of the bank and as per plain reading of Regulation-67, such an employee, who is ceased to be in employment on account of removal is not entitled for leave encashment.

22. The High Court of Mumbai in the case of Ashok and Others v. Chief Secretary, Union of India, Banking Division, New Delhi and Others (supra), which was a case of removal from service in respect of petitioner No. 3 and a case of compulsory retirement in respect of remaining two employees, held in paragraph-8 as under :-

"8. In the case at hand, there is absolutely no provision in the Regulations of the Bank whereunder the claim of the petitioners for leave encashment can be withheld on the ground that they have been penalised. If that be so,

respondent No. 3 was not right in refusing the claim of the petitioners for the amount of leave of encashment as was admissible to them."

23. The Mumbai High Court held that the respondents/Bank therein could not have withheld the amount of leave encashment, which was admissible to such an employee, in absence of any provision. The said order was though assailed before the Supreme Court but, the Special Leave Petition was also dismissed vide order dated 11-08-2017.

24. The Division Bench of this Court in WA No. 240/2019 (Narmada Jhabua Gramin Bank Through Chairman v. Mukund), while placing reliance on decision of the Mumbai High Court in Ashok and Others v. Chief Secretary, Union of India, Banking Division, New Delhi and Others (supra) has held that in a case of compulsory retirement, the regulation does not provide for forfeiture of leave encashment. It was further observed by the Division Bench that Regulations- 61 as well as 67, nowhere provide that an employee is compulsory retired, he shall not be entitled for leave encashment and accordingly, declined to interfere with the order passed by the Single Bench, by which, the petition of the employee was allowed.

25. A perusal of order dated 18-07-2019 passed by this Court in WP No. 16345/2014 (Bhoop Narayan Sharma v. Central Madhya Pradesh Gramin Bank) reveal that the same was also a case of compulsory retirement but, the Single Bench of this Court held that Regultion-67, does not save the case of termination and compulsory retirement from lapse of leave and therefore, the petitioner therein, who was compulsorily retired from service after departmental inquiry, was not entitled for leave encashment. A perusal of the said order reflect that it did not deal with situation where an employee is removed from service. While dealing with provisions of Regulation-45 as well, it was held that the same govern retiral pensionary benefits only and not leave encashment and leave encashment is governed by the provisions of Regulation-61 and 67 and the regulation-67, does not come to rescue of an employee, who has ceased to be in service. In Bhoop Narayan Sharma v. Central Madhya Pradesh Gramin Bank (supra), the order of Mumbai High Court in Ashok and Others v. Chief Secretary, Union of India Banking Division, New Delhi and Others

(supra) was not discussed which was affirmed by the Supreme Court as well. The Division Bench of this Court in WA No. 240/2019 (Narmada Jhabua Gramin Bank Through Chairman v. Mukund), while referring to the decision of Mumbai High Court in Ashok and Others v. Chief Secretary, Union of India, Banking Division, New Delhi and Others (supra) held that in a case of compulsory retirement, there cannot be forfeiture of leave encashment. Though, the order passed by the Division Bench on 08-11-2019 but, the said Writ Appeal was arising out of judgment dated 08-01-2019 passed in WP No. 18249/2019 (Mukund Hegde v. Narmada Jhabua Gramin Bank and Another) by the Single Judge of Indore Bench of this Court. The said Judgement dated 18-01-2019 in WP No. 18249/2019 (Mukund Hegde v. Narmada Jhabua Gramin Bank and Another) by the Indore Bench of this Court was not brought to the notice of this Court at the time of hearing of WP No. 16345/2014 (Bhoop Narayan Sharma v. Central Madhya Pradesh Gramin Bank). The order in Bhoop Narayan Sharma v. Central Madhya Pradesh Gramin Bank (supra) neither deals with the Mukund Hegde v. Narmada Jhabua Gramin Bank and Another (supra) nor with the Ashok and Others v. Chief Secretary, Union of India, Banking Division, New Delhi and Others (supra).

26. The Judgment dated 18-01-2019 in Mukund Hegde v. Narmada Jhabua Gramin Bank and Another (supra) has been affirmed by the Division Bench of this Court in WA No. 240/2019 (Narmada Jhabua Gramin Bank Through Chairman v. Mukund).

27. Since, the provisions of regulation-67, does not specifically exclude an employee from availing the benefit of leave encashment, if he has been removed from service therefore, under the garb of third proviso to regulation-67, an employee cannot be deprived of leave encashment.

28. Such an interpretation of Regulation-67 by the employer is not permissible, more particularly, when the employer intends to deprive the employee from his legitimate right to property, which he has earned after performing the duties during his entire service career. The stand of the Bank that the term "if he ceases to be" also includes cases of removal in the opinion of this Court, is unsustainable as there has to be specific provision in Regulation-67, specifying each penalty, which ultimately result in cessation

of master-servant relationship. More particularly, when the decision as regards withholding of leave encashment, is in issue, which undisputedly is a right of an employee.

29. Now, to deal with the contentions of the respondents as regards the interpretation of Regulation-67, in the light of the Apex Court in the case of State of Jharkhand and Another v. Govind Singh (supra), it would be germane to appreciate the provisions of Regulation-72, of the Regulations as well. Regulation-72 provides for gratuity and in the said regulation, the Bank while recognizing the right of the employee, permits disbursement of gratuity to an employee, even in a case of dismissal where "no financial loss to the Bank has caused." In the present case, the respondents while appreciating the fact that the disciplinary authority while passing the order of removal dated 22-04-2014 observed that, as the petitioner while depositing the amount has compensated/indemnified the bank and therefore, has released the amount of gratuity. Therefore, when the leave encashment as well as gratuity is the property of the petitioner, therefore, in the considered view of this court, a restricted interpretation of Regulation-67 would not only be in direct conflict with the provision of Article-300-A of Constitution of India but, will also leave scope with the employer to pass order in whimsical as well as capricious manner. The respondent/Bank cannot take recourse to discrimination in the cases of gratuity as well as leave encashment. When the bank itself permits that even upon penalty of dismissal, an employee is entitled for the gratuity, if there is no financial loss to the bank, then, in the present case, when undisputedly, there is no financial loss to the bank, under the garb of conspicuously silent provisions of Regulation-67, the petitioner herein could not have been deprived of the benefit of leave encashment, which is not only his statutory right but, also falls within the ambit of provisions of Article 300-A of Constitution of India.

30. If the interpretation so suggested by the respondent/Bank in respect of Regulation-67 is accepted, the same would result in exercise of unbridled and also whimsical powers at the hands of employer and then would have direct bearing on the property i.e. leave encashment of an employee.

31. Therefore, the reliance placed on the decision of State of

Jharkhand and Another v. Govind Singh (supra) by the respondents is mis-placed inasmuch as, the principle of "Casus Ommisus" as is being sought to be putforth by the respondents cannot pressed into service inasmuch as, it cannot be said that in the present case, there was inadvertence while framing the regulation and therefore, the issue in the present case is to be governed by the settled position of service laws. The words of the Statute if are clear, plain or unambiguous, the courts are bound to give effect to that meaning, irrespective of consequences but, in the present case, the Regulation does not fall within the aforesaid criterion laid down by the Apex Court in the case of J.P. Bansal v. State of Rajasthan LNIND 2003 SC 322 : (2003) 5 SCC 134 : AIR 2003 SC 1405.

32. The Apex Court in the case of Shiv Shakti Co-op. Housing Society, Nagpur v. M/s. Swaraj Developers and others 2003 AIR SCW 2445 held that the courts cannot add the defective phrasing of a statutory provisions and nothing can be added to make up the deficiencies in such a statutory provisions. The Court held in paragraph-23 as under:-

"23. Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said DANACKWERTS, L.J. in Artemiou v. Procopiou (1966-1 QB 878). "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord REID in Luke v. IRC (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it

rarely emerges".

It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton 11 Moore PC 345). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislatores, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute Casus omissus of oblivion datus dispositioni communis juris relinquitur; "a casus omissus," observed BULLER, J. in Jones v. Smart (1 TR 52), "can in no case be supplied by a Court of law, for that would be to make laws."

33. In the present case, the provisions of Regulation-67 are undoubtedly not plain and completely silent about the nature of penalties, which result in cessation of master-servant relationship. The interpretation of Regulation-67 which is favourable to the employer, is not permissible, more particularly, when such interpretation deprives an employee from his right to leave encashment. Moreover, in such a case, the employer cannot be permitted to exercise discretion, when the disciplinary authority itself has arrived at a categorical finding that there is no financial loss to the Bank.

34. In view of the aforesaid analysis, in the considered view of this Court, the impugned order dated 23-05-2015 contained in Annexure-P/5 deserves to be and accordingly stand quashed. The respondents are directed to forthwith release the amount of earned leave encashment to the petitioner within a period of 90 days along with interest @ 6% from May, 2014 (the month after the date of removal) till realization.

35. The petition is allowed to the extent indicated above.■

Petition allowed.

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