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Editorial

CONSOLIDATION OF LABOUR LAWS

The Ministry of Labour has taken initiative for the consolidation of the Labour Laws covering the Trade Union Act 1926, the Industrial and Employment (Standing Order) Act 1946 and the Industrial Disputes Act 1947 on the plea of simplification of certain provisions of these laws under the name of Industrial Relations Code for providing common interpretation of the various provisions of these laws affecting the labour force in the country. However, the idea appears to be to bring further impediments in the path of unionization amongst the working class in the country. To-day, hardly 6% of the total working population are unionized and are categorized as organized sector capable of achieving certain benefits to this group of trade union members as against more than 94% of the working population remaining outside the trade union formation and getting exploited by the industrialists in the country.

The Bill was introduced by the Labour Minister much against the opposition expressed by the various political parties including the Congress Party. To-day, the trade union rights do not accrue to the working population as a matter of right. It is through sustained struggles and the continuous display of the striking powers by the workers in the various sectors of the economy. They are organized mainly by the political parties who have an eye on the vote bank of the working class. In the process, the workers are now a divided lot and there are multiple unions in the same trade making it difficult to achieve collective bargaining power by the workers in every establishments. Some of the major definitions of the Trade Union Act are being re-defined and brought under Industrial Relations Code.

The definition of strike while retaining the existing definition of cessation of work by a body of workers employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work to accept employment etc., now intends to include the casual leave applied enmass by the workers on a given day by 50 percent or more workers. It is a well known fact that the workers in some of the sectors or institutions are not organized or discouraged from forming the unions on the plea that they are forbidden by forming the association etc., for example the Government servants, the Police force etc., These employees were resorting to mass casual leave in order to record their protest and as an expression of their resentment on certain issues. It may be recalled that the Officers working in the Banks were also prevented from formation of the unions under the

plea that they are the part of the Management in the earlier days of the evolution of the trade unions of the supervisory cadre in the banking industry. During those days, the mass casual leave was one of the weapon used by the employees working in such organizations. The Government should therefore come forward with provisions recognizing the trade union rights of all sections of the workforce in the country instead of taking away the current provision of the right of the employees to go on mass casual leave.

The Government is advocating for the adoption of the Industrial Relations Code Bill on the grounds of simplification and consolidation of the various definitions in the different acts as available at present. Unfortunately, there have been no consultation nor continuous dialogue with the trade union representatives in the country. The Trade Unions are demanding for a transparent system of recognition of the unions, the recognition of trade union rights to the working class and also the strict implementation of the various labour laws that are meant to protect the welfare and the interest of the working class in particular the unorganized sector. The Government has systematically dismantled the labour departments in order to assure the corporates that the Government is taking all measures to create a union free atmosphere to their investment in the country. Now, paradoxically, the Government claims that the benefits available under the various provisions of the labour laws will be protected by avoiding the multiplicity of definitions and authorities without compromising on the basic concepts of welfare of, and benefits to workers etc., the Industrial Relations Code 2019 would provide for the utilization of the technology for the purpose of enforcement. This would create further employment opportunities and bring transparency in the implementation of the various provisions of the labour laws. The earlier set up had tremendous opportunities and the labour departments were ensuring proper implementation of the rules and were pro-labor to some extent. However, in course of the reforms in the economic policies, the Government destroyed the Labour Departments and they were made to work for the benefit of capitalist and to take care of the corporate units in the country.

The Industrial Relations Code also aims at redefining the expression of permanent labour and contract labour. There is a slight improvement as regards the contract employees providing the extension of all the welfare facilities and statutory provisions in regard to the social security measures such as terminal benefits, the medical facilities etc. The IR Code also aims at providing certain relief to the workers who are subject to lay off retrenchment etc., apart from the current bench mark of 100 or more workers, the Government may review and decide about the threshold of the number of workers and also provide certain measure for re-skilling such workers through funding by the employer and employees as well as may be notified by the Centre from time to time.

Yet another major provision affecting the trade unions in particular the multiple trade unions in an institution is that the bargaining status as negotiator will be available only to those unions which has the support of 75% of the workers or more. If no trade unions has such a overwhelming support, the establishment will have a negotiating council consisting of all the representatives for the purpose of negotiation. In the backdrop of the multiplicity of unions, perhaps a very few institutions will have the advantage of a single union which can wield sufficient muscle power to ensure the welfare of their members.

The working class is already suffering for want of support and protection of the Government for getting organized. The industry lobby is systematically destroying any attempt of unionization in the new sectors of the economy. The workers in IT and BT Sector, the Telecom, the Garments, the Service Sector etc., are exploited due to absence of a well established trade union rights to protest their interest. The multiple political parties are in existence and it cannot be wished away. The Regional parties in addition to the major central trade

unions are throwing a big challenge to the workers for getting unionized. The threat of loss of job, victimization etc., have held may militant workers from coming to the forefront and organizing the trade unions to fight against the exploitation by the capitalist in the country.

The proposal placed before the Parliament in the name of IR Code is only old wine in the new bottle in fact with more stringent measures to prevent the workers from getting organized in almost all sectors of the economy in the country.■

TUS CAN'T STRIKE WORK AT WILL

The omnibus Industrial Relations Code soon to be tabled in Parliament, amalgamating four existing Central laws, will make it near impossible for trade unions to hold the employers to ransom, even as it seeks to pioneer the concept of unions with defined representative character as determined negotiating agents for the causes of workers. It would also get more difficult to strike work legally in establishments once the Code takes effect, as it proposes to extend the mandatory 14-days prior notice condition to practically all sectors, while currently such notice is required to be served only in case of "public utility services", although these are defined very broadly.

Also, when the conciliation process is on — which usually follows the strike notice and often takes several months — unions cannot resort to strikes.

Furthermore, either party — employer and the sole negotiating union — will have the option under the Code to refer an industrial dispute for adjudication. This again could come in handy for the businesses to frustrate bids to use strike tools like mass leaves because once the adjudication process begins, strikes will be illegal till it reaches a finality.

According to the Code, in cases where there are multiple trade unions in an industrial establishment, for any union to be designated as sole negotiating union, it will require the support of 75% of workers on the muster roll, a condition which experts say would make it virtually impossible for any union to get the title. If no union meets the criterion, a negotiating council will be set up.

In many states like Maharashtra, West Bengal, Gujarat and Kerala, there are already state laws in force recognising trade unions and the proposed central code won't override these laws. But in other states, including Uttar Pradesh, Tamil Nadu, Karnataka and Rajasthan, the Central law will apply in this regard.

The Code providing for full-benefit, fixed-term employment of any duration in all industries would come in handy for manufacturing units, including MSMEs to adjust their pay rolls to the seasonality and vicissitudes of their businesses. This flexibility, first introduced in the export-intensive garment sector in June 2016, was later extended to the leather industry and put into effect in all sectors via a March 2018 notification issued under the Industrial Employment (Standing Orders) Act, 1946 and the Code would cement the norm.

Although a key proposal in an earlier version of the Code to allow factories, mines and plantations employing up to 300 people -— against 100 now -— to retrench/lay off workers and/or shut shop without government approval has been removed, states will have a window to change the employee strength threshold for retrenchment purpose via notification route. This, according to industry bodies, too, could address a major concern of companies, including MSMEs.

It is, however, not clear if the Code would bar outsiders from becoming office-bearers of trade unions in the organised sector. The earlier version had proposed this but there were reports that the government was having second thoughts on this, given the opposition from unions. "The Code has made the workers' right to resort to strike difficult. Earlier those providing public utility services would have give a notice 14 days in advance before

resorting to a strike. The threshold has not been changed in the Code and has been made applicable to all industrial sectors," said KR Shyam Sundar, professor at XLRI Jamshedpur and a labour law expert.

According to him, making stringent provision for a legal strike applicable to all industrial establishments will make a legal strike virtually impossible. "Stringent conditions to define the legality of strike will eventually weaken the democratic right of the workers to resort to strike," he contended.

RSS-affiliated Bharatiya Mazdoor Sangh's general secretary Vrijesh Upadhyay said, "Earlier, we used to get registration only; the IR code will give us recognition."■

Source: Financial Express 27-11-2019

GRADUATES FACE 17% UNEMPLOYMENT RATE

Education is positively associated with labour market participation. If a person gets education there is a greater chance that such a person will seek employment. And, the probability of a person seeking a job increases as the level of her education increases. This is logical and is generally expected. Education has an apparent end goal —to get a job. An undergraduate degree makes a big difference.

We see this in the data. Over 62 per cent of the population that has an undergraduate degree or more, is in the labour force seeking a job. This proportion is way above the rest.

The gap between graduates-plus and the rest in terms of labour force participation is very large. Those who completed their 10th grade or more but not their undergraduate degree pencilled a labour participation rate of only 43 per cent. The participation rate then drops to less than 40 per cent for those who had some education but had not completed their 10th grade. Those with no education had an LPR of only 31 per cent.

The LPR at the lower end of the education spectrum is also very volatile. This phenomenon of low and volatile labour force participation of the uneducated is worth a detailed study. The expectation was that people with no education would be the more vulnerable and would be loath to remain out of the labour force. But apparently, they keep getting in and out of labour markets month after month.

The volatility of monthly labour participation rates declines as education increases. Graduates-plus have the least volatility in this respect. They are also not only way ahead of the rest in terms of labour participation they are also recording a steady increase in their participation rate.

While the overall LPR for India was at an all-time low at 42.4 per cent in November 2019, the labour participation rate for graduates-plus was at an all-time high of 62.9 per cent in October 2019. At 62.2 per cent in November, it was close to this peak.

India's labour force participation rate has fallen from nearly 47 per cent in 2016 to 43 per cent in 2019. This translates into a fall of over 7 million in the labour force over three years — from 443 million to 436 million. However,during the same period, 2.5 million graduates-plus joined the labour force.

Evidently, it is people with less education who have quit the labour markets. In fact, it is those with no education that have exited the labour markets over the past three years.

As basic education is becoming increasingly universal, the labour market in India has seen a sharp fall in those who have no education. Correspondingly, the share of those that have some education has increased. The quality of human resources in the labour markets is improving. Yet, the share of graduates-plus in Indian labour markets is very low.

Graduates-plus accounted for only 13.5 per cent of the total employed in 2019. This is an improvement over the 12.7 per cent share it had in 2016. But, it is still very low. Graduates-plus account for only about 13 per cent of the population above the age of 25 years in India. In comparison, this ratio is over 40 per

cent for developed countries. It is 45 per cent in South Korea and 17 per cent in China.

Evidently, India still has a lot of catching up to do on providing tertiary education to a vast majority of its population. Add to this, the woes of industry that has often complained about the low quality of labour in India.

While 62 per cent of graduates seek employment, only 51 per cent are employed. The remaining 11 per cent are unable to find a job although they are looking for one. Are they unemployable or are the opportunities inadequate in number and poor in quality? Possibly, both are true. If this is indeed true then we have a vortex of problems in education and employment in India.

First, the proportion of graduate+ in the population is low at only 13 per cent. Second, these graduates face the highest unemployment rate. The unemployment rate among graduates is 17 percent. Third, industry complains that the quality of graduates is not good enough for employment. Fourth, the rate in investments and therefore jobs creation is insufficient to absorb additions to the labour market.

This seems to be a vicious cycle in which vast numbers of educated are not considered employable and lack of investments leads to low job opportunities. This could discourage the young population from seeking higher education and also discourage educational institutions from producing employable labour. There can be a hope that in the long run, markets will sort out this problem. But, as has been well said, in the long run we are all dead.■

DIFFERENTIAL EPF RATES, CHANGE IN GRATUITY RULE ON THE CARDS

Social Security Code Bill in Lok Sabha

Workers in some sectors, who contribute to the Employees' Provident Fund (EPF), may see higher take-home salary, if the Social Security Code Bill becomes an Act.

The Bill was introduced in the Lok Sabha on Wednesday. The Bill talks about providing gratuity for workers even with less than five years of work period, and social security scheme for gig workers, besides other provisions. With the new Bill, all the four labour codes — Code on Wages, the Occupational Safety, Health and Working Conditions Code, the Code on Social Security, and the Industrial Relation Code — have been approved by the Cabinet and introduced in Parliament. Once enacted, the four codes will subsume 44 old labour laws.

The Bill on Social Security Code says, "The Central Government, after making such inquiry as it deems fit, may, by notification, specify rates of employees' contributions and the period for which such rates shall apply for any class of employee." This means the government will notify sectors where lower rate of contribution to be applicable. Further, it will also inform about the differential rates.

As of now there are two rates of EPF contribution: 12 per cent and 10 per cent. 12 per cent is applicable for all the units where number of employees is more than 20 while in case of lower number of employees the rate will be 10 per cent. In both the cases, matching contribution is made by the employer.

GRATUITY PAYMENT

The Bill makes a provision for payment of gratuity in case of Fixed Term Employment on pro-rata basis even if the period of fixed term contract is less than five years. As of now, gratuity is paid to workers completing at least five years of continuous job. Also, it does not differentiate between regular employees and those who are on contract.

The Bill prescribes a special welfare scheme for unorganised workers (including audio visual workers, beedi workers, non-coal workers) on matters relating to life and disability cover, health and maternity benefits, old age protection, education, housing, etc. The State Government will formulate and notify, from time to time, suitable welfare schemes for

unorganised workers, including schemes relating to provident fund, employment injury benefit, housing, educational schemes for children, skill up gradation of workers, funeral assistance and old age homes.

UNORGANISED WORKERS

A special purpose vehicle may also be constituted by the Centre for implementing such scheme. Any scheme notified by the State Government may be wholly funded by the State Government, partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers, funded from any source including corporate social responsibility fund. The Central Government may provide such financial assistance to the State Governments for the purpose of schemes.■

Source: Business Line, date:12/12/2019

INDUSTRIAL RELATIONS CODE BILL TO COME UP IN LS TODAY

Long pending labour reform is packed with proposals aimed to improve ease of doing biz Long-pending reforms on the labour front are set to roll with the Lok Sabha on Wednesday taking up the Industrial Relations Code (IRC) Bill, packed with proposals aimed to increase the ease of doing business.

Provisions of the bill promoting fixed-term employment, smoothening the retrenchment process, and discouraging strikes are expected to be welcomed by the business community, while displeasing worker unions who may see an erosion of their bargaining power.

The move follows recent government initiatives to boost investment, including a sharp cut in corporate taxes, relaxation of foreign investor rules, and a push for privatization. A comprehensive reforms push may help revive a slowing economy and ultimately boost employment generation.

The bill includes fixed-term employment as a category of employment in classification of workers, a provision that workers and unions view as casualization of the workforce. However, it has been a long pending demand of employers to manage elasticity of demand at the shop floor without hiring permanent employees.

The definition of a strike is being amended to include 'mass casual leave' in case of a sudden protest and makes it mandatory for a notice of 14 days for strikes and lockouts in any establishment.

To help employers check constant unionism, the bill introduces a feature of 'recognition of negotiating union' under which a trade union will be recognized as sole 'negotiating union' if it has the support of 75% or more of the workers on the rolls of an establishment, according to details shared with Mint. As several trade unions are active in companies, it will be tough for any one group to manage 75% support, hence taking away their negotiating rights. In such a case, a negotiating council will be constituted for negotiation, says the bill.

IRC is one of the four labour codes that the Centre is pushing through to reform India's archaic labour laws and amalgamate 44 central laws into four broad legislations. The bill merges the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947.

According to the bill, terminating a worker at the end of the fixed term would not be retrenchment, said a government official who did not wish to be named. "In view of the present globalized economy, fluctuation in quantum of production of goods and services (depending upon demand and supply), necessitates employment of additional workers for a limited period of time. In view of this, the proposed amendments on the one hand make it easier for the employer to engage/disengage workers based on requirement. On the other hand, it is also being ensured that the retrenched worker is provided an opportunity to acquire new skills through a re-skilling fund to enhance his employability to facilitate finding new employment," the official said.

The Indian economy grew at 5% in the June quarter,

a six-year low, while the country's factory output shrank for the second straight month at 4.3% in September, recording its worst show since the present series was launched in April 2012.

"The ease of compliance of labour laws will promote the setting up of more enterprises, thus catalysing the creation of employment opportunities in the country," said another official familiar with the development, requesting anonymity. The bill, however, underlines that fixed-term employees will get all statutory benefits on a par with the regular employees who are doing work of the same or similar nature.■

Source:Mint 27-11-2019

2019-IV-LLJ-191 (MAD)
LNINDORD 2019 MAD 6925
IN THE HIGH COURT OF MADRAS
PRESENT:
HON'BLE MR. JUSTICE T.S.SIVAGNANAM AND
HON'BLE MS. JUSTICE V. BHAVANI SUBBAROYAN
W.A.NO. 2429 OF 2013 AND M.P.NOS.1 OF 2013, 1 AND 2 OF 2014 ....29TH APRIL, 2019
STATE BANK OF INDIA REPRESENTED BY ITS DEPUTY GENERAL MANAGER AND ANOTHER ....PETITIONERS
VERSUS
S.CHANDRASEKARAN AND ANOTHER ...RESPONDENTS

Tribunal Award-Scope of interference –Appellant/Bank dismissed 1st Respondent from service on charge of temporary misappropriation-Appellate authority modified dismissal from service into removal from service and same confirmed by Industrial Tribunal, however, Single Judge quashed Tribunal award and directed reinstatement with 50% backwages and continuity of service, hence this appeal –Whether order passed by Single Judge quashing Tribunal award, sustainable –held, it was not case of re-appreciation of evidence, but, evidence not considered by Tribunal, taken note of by Single Judge –Tribunal could not pick and choose from deposition to suit its decision-Tribunal warranted to examine deposition wholly and not make interference by picking lines in between deposition-Single Judge relied upon depositions, not considered by Tribunal for passing award –Order of Single Judge, sustained-Appeal Dismissed.

ORDER

Ms.BHAVANI SUBBAROYAN.J.

This Appeal has been filed against the order of the learned single Judge allowing the Writ Petition filed by the first respondent challenging the award passed by the Industrial Tribunal and setting aside the award of the Industrial Tribunal.

2. The case of the appellants before this Court is that the appellant is the bank and the first respondent, an employee while he was serving in Ramanathapuram Branch of the appellant, a charge memo dated 30.08.2014 was issued against him containing seven charges. Altogether, the main crux of seven charges is based on the allegation of temporary misappropriation of ₹ 10,000/- belonging to another customer and held the same for a period, more than two months for special gain. After issuing of charge memo, an enquiry was conducted and the first respondent employee was dismissed from service by the disciplinary authority by order dated 15.05.2005. Subsequently, an appeal was prefereed by the first respondent to the appellate authority which came to be rejected by its order dated 30.03.2006, wherein the appellate authority modified the punishment of dismissal from service into removal from service.

3. The first respondent employee initiated proceeedings before the Conciliation Officer under the Industrial Disputes Act and thereafter, having failed in the conciliation proceedings, the Government of India, Ministry of Labor, by order dated 18.04.2007 referred the dispute regarding non-employment of

the first respondent to the Industrial Tribunal, which later came to be numbered as I.D.No. 17/2007. The Industrial Tribunal, before whom the appellant bank and the first respondent employee contested and produced evidences, and after a detailed enquiry and adjudication, the Tribunal by its order dated 26.06.2009 confirmed the order passed by the appellate authority and sustained the order of removal from service of the first respondent. The award passed by the Industrial Tribunal came to be challenged in W.P.No. 6806 of 2010 before the learned single Judge. By order dated 04.12.2013, the learned single Judge had allowed the Writ Petition thereby, quashing the award passed by the Tribunal and had set aside the punishment of removal imposed on the first respondent. The learned single Judge further directed the appellants herein to reinstate the first respondent with 50% backwages with continuity of service and attendant benefits. This order passed by the learned single Judge is under challenge by way of intra court Appeal before us.

4. The learned counsel appearing for the appellant Mr. Sethuraman vehemently contended that the learned single Judge ought not to have appraised the evidence, which is in the form of re-appreciation of evidence and had given a different finding from that of the Tribunal, which is totally incorrect. The learned counsel would also contend that the allegation against the first respondent is grave in nature when the first respondent cannot be found to have inadvertently credited the amount to his account when he knew that the Demand Draft was not sent to him. That apart, the learned counsel has also pointed out that the learned single Judge had failed to appreciate the finding of the Tribunal, wherein the Tribunal has come to a conclusion that the first respondent was acting in clandestine manner regarding the repayment of wrongly credited and misappropriated money, that which, the first respondent did not inform the bank authorities immediately. Based on the same, the Tribunal having come to the conclusion that the first respondent employee had with a bad intention misappropriated ₹10,000/- of another customer of the appellant bank and the same conclusion cannot be interfered under Article 226 of the Constitution of India by reappreciating the evidence and that were let in before the Tribunal.

5. The learned counsel for the appellant further contended that the learned single Judge exercising jurisdiction under Article 226 cannot interfere with the award passed by the Tribunal by going into the evidence like an appellate authority, which is not warranted under article 226. The learned counsel also contended that the factual findings rendered by the Labour Court cannot be interfered under Writ jurisdiction and cannot reappreciate the findings of the Labour Court. To substantiate his arguments, the learned counsel also relied upon the judgment of this Court in Francis Vincent Neelankovil v. Industrial Tribunal in an unreported judgment dated 11.12.2003 W.A.No. 559 of 1999 and the judgment rendered by the Hon'ble Supreme court in Central Industrial security Force and Others v. Abrar Ali C.A.No. 2148 of 2015 and prayed for setting aside the order passed in the Writ Petition.

6. This Court, by order dated 02.01.2014 while ordering notice at the time of admission had ordered stay of the order passed by the learned single Judge. 7. per contra, the learned counsel appearing for the respondent Mr. K.M.Ramesh, employee of the appellant bank submits that the first respondent / employee was initially appointed as a messenger in state Bank of India, muthukulathur Branch on 20.01.1982 and after serving for 10 years, he was promoted as clerk and posted at Ramanathapuram Branch. However, while he was serving at that Branch, on the allegation that he has erroneously credited a Demand Draft of an amount of ₹ 10,000/- to his account, he was charge sheeted on 30.08.2004. The learned counsel would further contend that the order passed by the learned single Judge setting aside the award passed by the Tribunal is in order as the learned single judge has not exceeded his jurisdiction under Article 226 and the order in the Writ Petition is well found and need not be interfered with. The allegation set out in the Appeal by the appellant bank cannot be countenanced by the appellant under any corner of law. The appellant has not made out any valuable, legal grounds for interfering with the learned single judge's order.

8. In support of his arguments, the learned counsel for the first respondent relied upon the case in Rajender Kumar Kindra v. Delhi Administration through Secretary (Labour) and Others (1984) 4 SCC 635 and Union of India v. K.A Kittu and Others AIR 2000 SC 3727 : (2001) 1 SCC 65 : LNIND 2000 SC 1500 to

substantiate his arguments that when there are no clear findings based on no evidence and when the Tribunal is duty bound to consider the evidences of all the witnesses examined by the accused and failure to do so, the High Court under article 226 has got jurisdiction to interfere in such award and set aside the same.

9. Heard both the learned counsels and perused the materials on record.

10. upon hearing the arguments of the learned counsel for the appellant and first respondent/ employee and on reading of all the relevant materials on record, especially the order passed by the learned single Judge in the Writ Petition, it could be seen that while the first respondent employee was in his seat as a single window operator, a cover addressed to S. Chandrasekar State Bank of India, Ramanathapuram Branch was delivered to him by the courier agent, which is a foreign draft for ₹10,000/- favouring S. Chandrasekar. As there was no covering letter along with the draft, the first respondent seems to have misunderstood that the demand draft was for him as he has received similar demand draft previously from his relative and deposited the same in his account for enacashment. As deposed by the first respondent before the enquiry officer that the first respondent has received foregin remittance on an earlier occasion from his relative Kumaresan previously in 2002 and 2003.

11. The first respondent misconstruing the demand draft which contains similar name as that of himself instructed Thiru. R.Palani, a sub-staff who prepared a voucher and arranged to credit the same into the first respondent's account. However, the courier agent, on later date, after verification, found that the courier was dispatched wrongly as the courier agent has received such information from the original addressor. Thereafter, the first respondent informed the same to the Assistant General Manager, State Bank of India, Ramanathapuram with the written statement and he also simultaneously made arrangement to remit back ₹ 10,000/- to the correct beneficiary through the courier agent. The first respondent pleaded innocence as it was an unfortunate event, wherein first respondent misconstrued the demand draft as the same was in similar name and initial as that of himself. However, the appellant bank has initiated disciplinary proceedings which culminated into removal of the respondent from service. Thereafter, the first respondent approached the appellate authority and the appellate authority concurred with the disciplinary authority, which culminated into a Industrial Dispute before the Industrial Tribunal.

12. On perusal of the award passed by the Tribunal, as rightly pointed out by the learned single Judge in his order, by preliminary order dated 11.01.2008, the Tribunal had set aside the enquiry conducted by the bank and thereafter, the Tribunal permitted the bank to let in evidence to prove the charges. Before the Tribunal, witness Thiru. R.K.Kumaresan and the first respondent himself were examined in favour of the first respondent employee and on the side of the management, the manager A. Muthukumar was also examined. Before the Tribunal Ex.1 to 13 were marked on behalf of the first respondent employee and Ex. 1 to 11 were marked on behalf of the management bank. On a clear perusal of the award passed by the Tribunal, as rightly held by learned single Judge, cross examination of MW-1, which was not all discussed anywhere by the Tribunal, which is extracted at para-34 and 35 of the learned single Judge's order, which is as hereunder:-

> "34. The following evidence of M.W-1 during cross-examination is relevant and it is extracted hereunder:
>
> "Prior to clearing this instrument will be scrutinized as to the name and the account name. When the old account is keyed, the new account number can be made known if we want it. In Ex M.3 the account number against payee's name is the old account number. Ex.M4 voucher was passed by S.Munian, Officer. This is the voucher rectified under Ex.M.10 Ex.M4 is a wrong credit voucher. In para-6 of my proof of affidavit, inadvertently credited voucher relates to Ex.M4"
>
> 35. The aforesaid evidence in favour of the petitioner was not considered by the Tribunal. Likewise M.W.1 also deposed that the petitioner gave a letter Ex.M.7 to the effect that he thought that the draft is pertained to him and the same is sent by his relative. After he came to know that the draft was not meant for him, he asked the

courier agent to enquire into and after his enquiry with his relative, he realized that the amount was not meant for him and for that reason, he issued the cheque for ₹ 10,000/-. In fact, the following deposition of M.W.1 during cross-examination is extracted hereunder:

"The employee Chandrasekaran has stated in Ex.M.7 that he thought that the demand draft pertained to him sent by his relative. It is further mentioned that after a few days he came to know that the Demand Draft was not meant for him and therefore he asked the courier to enquire about it and after his enquiry, he realized that the amount was not meant for him and on account of that he issued a cheque for ₹10000/-."

13. The above evidence is clinchingly in favour of the first respondent employee, which evidence was brushed aside by the Tribunal. The Tribunal has also taken into account the deposition of MW.1 in total, which is absolutely favouring the first respondent employee. On a conjoint reading of the award passed by the Tribunal and the order passed by the learned single Judge, we are unable to accept the arguments put forth by the appellant's learned counsel that the learned single Judge has wrongly interpreted and interfered with the Tribunal's order. We are also unable to accept the contention raised by the learned counsel for the appellant that the learned single has reappreciated the evidence before the Tribunal for allowing Writ Petition thereby, setting aside the award.

14. The interference shown by the learned single judge is only the evidence that were not taken into consideration by the Tribunal or not discussed by the Tribunal while the Tribunal dismissed the claim petition while the Tribunal dismissed the claim petition filed by the first respondent. It is clear from the award that the Tribunal had taken all the depositions against the first respondent and discussed the same elaborately by omitted to even consider the evidence of MW-1, which was in favour of the first respondent. Even the reasons as stated by the Tribunal in its award is not satisfactory for it to confirm the order of removal. Whereas the learned single Judge has not interfered or re-appreciated the findings of the Tribunal but gave emphasis for the deposition of MW-1 Thiru A. Muthukumar, which was not taken into account by the Tribunal completely. Thus, it is not a case of re-appreciation of evidence, but a case where the evidence was not considered by the Tribunal, which was taken note of by the learned single Judge. The Tribunal for it to arrive at an award dismissing the Industrial Dispute raised by the employee cannot pick and choose from the deposition to suit its decision and in contrary while deciding an award based on the deposition of a particular witness, the Tribunal is warranted to examine the deposition wholly and not make interference by picking lines in between the deposition. The learned single Judge had relied upon the depositions, which were not considered by the Tribunal for passing the award. Nowhere in the order, the learned single Judge has given any interpretation to the order of the Tribunal nor had substituted his opinion from that of opinion of the Tribunal.

15. In this regard, the judgments relied on by the learned counsel for the appellants are totally on a different footing and on different set of facts and cannot be applied to the case on hand. The Hon'ble Supreme Court in State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya AIR 2011 SC 1931: (2011) 4 SCC 584: LNIND 2011 SC 247, which was cited in the case in Central Industrial Security Force and Others v. Abrar Ali Civil Appeal No. 2148 of 2015, has indicated the scope of interference of Writ Courts under article 227 of the Constitution of India against the awards of the Labour courts/Industrial Tribunals in the following manner:-

"The High court should not have entered into the arena of facts which tantamounts to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under article 226 of the Constitution of India. In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya (2011) 4 SCC 584, this court held as follows:

"7. .....Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clerly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record.....

12. ..... The High court can only see whether:

(a) .....
(b) .....
(c) there is violation of the principles of natural justice in conducting the proceedings;
(d) .....
(e) .....
(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

13. (i) the finding of fact is based on no evidence."

16. The case in hand is totally different as the learned single judge in our opinion has not re-appreciated nor acted as an appellate authority and did not interfere with the findings rendered in the award. Whereas the learned single Judge has relied upon those evidence, which were not considered for discussion by the Tribunal for allowing the Writ Petition.

17. In a case reported in Rajender Kumar Kindra v. Delhi Administration through secretary (Labour) and Others (supra), the Hon'ble Supreme Court in paragraphs 16 and 17 held as follows:-

"16. Mr. Jain contended that once Mr. Kakkar came to the conclusion that the appellant was given full opportunity to participate in the domestic enquiry neither High court under art. 226 nor this Court under art. 136 can sit in appeal over the findings of the enquiry officer and reappraise the evidence. We have not at all attempted to re-appreciate the evidence though in exercise of the jurisdiction conferred by sec. 11-A of Industrial disputes act, 1947 both arbitrator and this court can reappraise the evidence led in the domestic enquiry and satisfy itself whether the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the arbitrator has only the power to decide whether the conclusions reached by the enquiry officer were plausible one deducible from the evidence led in the enquiry and not to re-appreciate the evidence itself and to reach the conclusion whether the misconduct alleged against the workman has been established or not. This court in workmen of Firestone Tyre Rubber Company of India (P) Ltd. V. Management and Others held that since the introduction of sec. 11-A in the Industrial Disputes Act, 1947, the Industrial tribunal is now equipped with the powers to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied upon by the employer establishes the misconduct alleged against the workman. It is equally well-settled that the arbitrator appointed under Sec. 10-A is comprehended in sec. 11-A. This court in Gujarat Steel tubes Ltd. V. Gujarat Steel tubes Mazdoor Sabha, held that an arbitrator appointed under sec. 10-A of the Industrial Disputes Act, 1947 is comprehended in sec. 11-A and the arbitral reference apart from sec. 11-A is plenary in scope. Therefore it would be within the jurisdiction both of the arbitrator as well as this court to re-appreciate the evidence though it is not necessary to do so in this case. It is thus well-settled that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under sec. 10-A or this court in appeal under art. 136 can reject such findings as perverse. Holding that the findings are perverse does not constitute reappraisal of evidence, though we would have been perfectly justified in exercise of Powers conferred by sec. 11-A to do so.

17. It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind.

Viewed from either angle, the conclusion of the enquiry officer as well as of the arbitrator Mr. Kakkar are wholly perverse and hence unsustainable. The High Court, in our opinion, was in clerly error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence ."

18. In the judgment in Union of India v. K.A.Kittu and Others (supra), the Hon'ble Supreme Court in paragraphs 9, 10 has held as follows:-

> "9. The Tribunal before proceeding to examine report of the Inquiry Officer rightly took note of the fact that Tribunal cannot review the report of the Inquiry Officer if there are relevant materials on record and the findings of the Inquiry Officer are based on such material facts. We further find from the impugned judgment that the Tribunal mainly considered the contradictory findings of the Inquiry Officer. Therefore, the submission of the learned senior counsel for the appellant has no force.
>
> 10. Regarding charges 1 and 2 the Inquiry Officer held that respondent could not be blamed for collection of premium and pattom and for treating Thomas Sebastian and two others as "would be lessee" but found fault in the action of the delinquent officer in giving sanction as he had no jurisdiction. It was further held that it was motivated and actuated of ulterior motives. According to the Tribunal, the above finding regarding motive was based on no evidence and in this connection, the Tribunal quoted the following observation of the Inquiry Officer namely "unfortunately", there are no evidence to show that his action can be directly relatable to any material gains."

We have perused the report of the Inquiry Officer and we find that Tribunal is right in holding that above finding regarding motive is based on no evidence."

19. The above decisions rendered by the Hon'ble Supreme Court squarely applies to the present case in hand, which is in favour of the first respondent.

20. Under these circumstances, we are of the view that the order passed by the learned single Judge has to be sustained and we find no merit in the present Appeal filed by the appellant, which deserves to be dismissed. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous.

Petitions are closed.■

Appeal dismissed.

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