From the Desk of Editor

BALANCING JUSTICE
EXPLORING CRIMINAL PROCEEDINGS AND DEPARTMENTAL ENQUIRIES

1. Departmental Enquiries: Departmental enquiries are internal investigations conducted by an employer to address allegations of misconduct or violations of departmental policies by an employee. These enquiries typically follow a structured process that includes issuing a charge sheet outlining the allegations, providing the employee with an opportunity to respond, conducting a thorough investigation, and reaching a decision based on the evidence presented.

❋ **Process:** The process of a departmental enquiry begins with the employer identifying instances of misconduct or violations of laid down policies and rules. A charge sheet is then issued to the employee, detailing the allegations, and inviting their response. The employee is given a reasonable opportunity to present his/her case and defend against the charges. The employer may appoint an investigating /enquiry officer or a panel to conduct the investigation impartially and objectively. The enquiry officer collects evidence, interviews witnesses, and prepares a report based on their findings. Finally, a disciplinary authority or the employer's management reviews the report and decides on the appropriate action, which may include warnings, suspension, termination, or other disciplinary measures.

❋ **Principles:** Departmental enquiries are conducted in accordance with the principles of natural justice, which require that the employee be given a fair and impartial hearing. This includes the right to know the charges against them, the

opportunity to present their case and evidence, and the right to be heard by an unbiased decision-maker.

2. Criminal Proceedings: Criminal proceedings involve the initiation of legal action by the state against an individual for allegedly committing a criminal offence. These proceedings are governed by criminal laws and are aimed at punishing offenders for their unlawful actions.

❋ **Filing of Complaint:** If the misconduct of an employee constitutes a criminal offence under the law, the employer may choose to file a complaint with the police or other appropriate authorities. The authorities then conduct an investigation to gather evidence and determine whether there are sufficient grounds to proceed with criminal charges.

❋ **Trial:** If the authorities decide to proceed with the case, the accused employee is prosecuted in a criminal court. The trial involves presenting evidence, examining witnesses, and making legal arguments before a judge. The burden of proof lies with the prosecution, which must prove the guilt of the accused beyond a reasonable doubt.

❋ **Verdict:** At the conclusion of the trial, the judge delivers a verdict based on the evidence presented and applicable laws. If the accused is found guilty, they may be sentenced to fines, imprisonment, or other penalties prescribed by law. If found not guilty, the accused is acquitted, and no further legal action is taken against them in relation to the charges.

3. Choices with the Management: Employers faced with allegations of misconduct by an employee must carefully consider their options and make informed decisions based on the circumstances of each case. Factors to consider include the severity of the misconduct, the impact on the organization, the likelihood of success in departmental enquiries or criminal proceedings, and the potential consequences for the employee.

❋ **Assessment:** Employers should conduct a thorough assessment of the allegations and gather relevant evidence before deciding on the appropriate course of action. Legal advice may be sought to understand the implications of each

option and to ensure compliance with applicable laws and regulations.

❋ **Decision-making:** Based on the assessment, the employer may choose to initiate departmental enquiries, pursue criminal proceedings, or take other disciplinary measures as deemed necessary. The decision should be guided by principles of fairness, transparency, and adherence to due process.

4. Stay of Departmental Enquiries: In cases where criminal proceedings are initiated against an employee for the same misconduct that is the subject of a departmental enquiry, the latter may be stayed or postponed until the conclusion of the criminal case. This ensures that the employee's right to a fair trial is not prejudiced, and any findings of the departmental enquiry are not influenced by the pending criminal proceedings.

❋ **Legal Precedent:** The principle of stay of departmental enquiries is based on the legal principle of fair trial and the need to avoid double jeopardy, where an individual is subjected to punishment or proceedings for the same offence more than once. By staying the departmental enquiry, the employer respects the employee's right to defend themselves in criminal court without facing simultaneous disciplinary action.

❋ **Procedure:** The decision to stay a departmental enquiry is typically made by the employer or the disciplinary authority overseeing the enquiry. It may be based on a request from the employee, legal advice, or considerations of fairness and procedural integrity. The departmental enquiry could be held first, and prosecution can be resorted to later and it is for the departmental authorities to select and not for the accused to say how the choice should be made.

5. Effect of Conviction: If an employee is convicted in criminal court for the misconduct in question, it may have significant implications for his/her employment status and future prospects. The employer must consider the nature of the offence, its relevance to the employee's role, and the organization's policies and procedures regarding criminal convictions.

❋ **Termination:** Depending on the severity of the offence and its impact on the employer's reputation or business operations, the employer may choose to terminate the employee's employment. This decision should be made in accordance with laid down policies, employment contracts, and applicable laws governing termination.

❋ **Disciplinary Action:** Even if termination is not warranted, the employer may impose other disciplinary measures, such as suspension, demotion, or loss of privileges. The goal is to ensure that the employee is held accountable for their actions and that appropriate consequences are imposed.

6. Effect on Departmental Action after Acquittal: If the employee is acquitted in criminal court, any adverse findings or actions resulting from the departmental enquiry may be reconsidered or set aside. The principle of double jeopardy prohibits an individual from being punished twice for the same offence, thereby necessitating a review of the disciplinary proceedings considering the court's decision.

❋ **Reinstatement:** In cases where the employee was suspended or terminated pending the outcome of criminal proceedings, he/she may be reinstated to his/her former position or offered alternative employment if the charges are dismissed or the employee is acquitted. This ensures that the employee is not unfairly prejudiced by the disciplinary action taken during the criminal proceedings.

❋ **Compensation:** Employers may be liable to compensate the employee for any loss of wages, benefits, or reputation resulting from wrongful disciplinary action taken in response to criminal charges that ultimately prove to be unfounded. This underscores the importance of conducting fair and impartial investigations and respecting the employee's rights throughout the process.

In navigating the complexities of misconduct allegations and legal proceedings, employers must uphold the principles of fairness, procedural integrity, and respect for individual rights. By carefully considering the options available and seeking legal guidance where necessary, employers can effectively address misconduct while protecting the interests of both the organization and its employees.■

Article

DIGEST OF EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL ORDERS

DAMAGES UNDER SECTION 14-B OF EPF & MP ACT, 1952-JUSTIFICATION OF

The appellant filed an appeal before the Central Government Industrial Tribunal-cum-Labour Court-II Rouse Avenue, New Delhi, against orders dated 24.12.2019 passed by the EPF Authority under Section 14-B of the Act.

Brief Facts:

The appellant has contended that it has been facing several legal proceedings .Matter is pending subjudice before the Supreme Court. Appellant is a part of Sahara Group of companies. Supreme Court has directed that it shall not part with any movable or immovable properties until further order. Even the Chairman of the Group was arrested and detained in judicial custody by the order of the Supreme Court. It has been causing huge loss in business. It continued to deposit EPF contribution from out of it's ***corpus*** fund which depleted. It was not able to part with the properties due to direction of the Supreme Court. Due to unavoidable circumstances it failed to deposit EPF contributions in time which was not intentional nor intended to avail any wrongful gain by the appellant. Appellant was going through acute liquidation problem. EPF Authority went on to pass the impugned order without giving a finding on the ***mens rea*** behind the delayed remittance of the appellant. EPF Authority has not assigned any reason for imposition of the damage at the maximum percentage prescribed under the scheme. Contention of the EPF Authority is that despite giving opportunity appellant failed to produce any records. EPF Authority is vested with the power of exercising discretion.

Reasons and Decision:

The Appellate Tribunal observed that impugned order is a cryptic one since EPF Authority has not rendered any finding on the ***mens rea***. It is a settled principle of law that the decision rendered by a Co-ordinate Bench is binding on the subsequent Bench of equal or lesser strength Even the mitigating circumstances on the basis of documents placed on record have not been considered by the EPF Authority. Impugned order under section 14-B of the Act has been passed without application of mind and without giving due opportunity to the appellant of producing evidence during the inquiry. Thus the EPF Authority has committed patent illegality while passing the impugned order which is not sustainable in the eye of law. Impugned order is set aside. Matter is remanded to the EPF Authority for a fresh inquiry after giving due opportunity to the appellant within six months.

M/s Sahara Q Shop Unique Product Range Ltd. v. RPFC Gurgaon (E) and another ATA No. D-2/13/2020 Dated 21.02.2023

SCOPE OF EXEMPTION FROM PRE-DEPOSIT CONDITION UNDER SECTION 7-O OF THE EPF&MP ACT

The appellant filed an appeal before the Central Government Industrial Tribunal–cum-Labour Court at Hyderabad against an order dated 19.03.2015 passed by the EPF Authority, under Section 14-B of the Act along with an application under Section 7-O of the Act for waiver of the pre-deposit condition.

Brief Facts:

The appellant has contended that the impugned order impugned order passed under Section 14-B of the Act is bad in law illogical ignoring the settled law by the Supreme Court and High Courts. Even the impugned order has been passed without hearing the appellant. EPF Authority has not exercised its discretion judicially while passing the impugned order. EPF Authority has not established any ***mens rea*** on the part of appellant and other mitigating circumstances. The contention of EPF Authority is that impugned order has been passed on the basis of guidelines issued by Central Provident Fund Commissioner, after giving ample opportunity hearing to the petitioner.

Reasons and Decision

The Appellate Tribunal observed that the appellant has raised debatable issues which require consideration in appeal. Keeping in view the facts and circumstances of the case appeal is admitted on the basis of law lay down by the Apex Court in ***M/s. Shiv Herbal Research v. Assistant Provident Fund Commissioner,*** WP No. 1245/2011. Application under section 7-O of the Act is allowed.

M/s. Dream Valley Resorts Pvt. Ltd. v. Assistant Provident Fund Commissioner, Hyderabad, IA No. 1/2023 in EPF Appeal No. CGIT 2015 (148/18) Dt/-12.07.2023.

CONDONATION OF DELAY IN FILING APPEAL-SCOPE OF

The appellant filed an appeal before the Central Government Industrial Tribunal-cum-Labour Court-II, Rouse Avenue, New Delhi against an order dated 19.04.2023 passed by the EPF Authority Faridabad under Sections 14-B and 7-Q of the Act along with an application for granting relief of staying the impugned orders.

Brief Facts:

The appellant has contended that impugned are unreasoned since no finding on the ***mens rea*** on the part of appellant has been given. Order passed under section 7-Q of the Act is appealable being a composite order passed in common proceedings. Contention of EPF Authority is that two orders have been passed separately and Order passed under Section 7-Q of the Act cannot be dealt in this appeal.

Reasons and Decision:

The EPF Appellant Tribunal observed that at this stage no pinion can be formed on the compositeness of the order. It is not desirable to stay execution of the order passed under Section 7-Q of the Act. Factors to be considered at this stage are the period of default and amount of damages levied. Settled law is that the Courts and Tribunals are obliged to adhere to the question of undue hardship

when raised before it. In this case the period of default is from 04.02.2022 to 10.11.2022. But the amount of damages is equally big. An interim order cannot be unconditional. The appellant is directed to deposit 25% of the assessed amount within three weeks as a precondition for stay pending disposal of the appeal. There will not be stay on the amount assessed under Section 7-Q of the Act. Put up on 26.07.2023 for compliance of the direction. EPF Authority is directed not to take any coercive action for recovery of damages till the next date and the order if complied till disposal of the appeal.

M/s. Sai Print & Pack v. Assistant Provident Fund Commissioner ATA No. D-2/96/2023 Dt/-03.07.2023

CONDONATION OF DELAY-SCOPE OF

The appellant filed an application before the Central Government Industrial Tribunal-cum-Labour Court-I Rouse Avenue, New Delhi under Section 5 and Section 29 of the Limitation Act 1963 read with Rule 7 of the Tribunal (Procedure) Rules, 1997 (the Rules) seeking condonation of delay in filing appeal against order passed by EPF Authority under section 7-A of the Act.

Brief Facts:

EPF Authority passed a order under section 7-A of the Employees Provident Funds and Miscellaneous Act 1952 which was communicated to appellant on 26.08.2022. Contention of appellant is that it came to know about the order on 02.11.2022. Proviso to Rule 7 (2) of "the Rules" providing limit of 60 days for condonation of delay as per discretion of Tribunal is **ultra vires.** "The Rules" are void and annulled. Proviso to Rule 7 (2) of "The Rules" being the delegated legislation cannot be said to be excluding from the operation of section 29 (2) of the Limitation Act 1963 which is a statutory provision having superior efficacy over the delegated legislation. Proviso to Rule 7 (2) of "the Rule" are directory in nature and does not restrict powers of this Tribunal to condone the delay as per Section 29 (2) of the Limitation Act, 1961. Sections 4 to 24

(inclusive) shall apply in this matter as "the Rules" has not expressly excluded that the Limitation Act 1963 is not applicable for condonation of delay. Contention of EPF Authority that Appellant has failed to explain delay on day-to day basis. Limitation Act is not applicable in proceedings under the Act.

Reasons and Decision:

The Appellate Tribunal observed that the contention of appellant is that the reason given by the appellant in belated filing the appeal are sufficient enough to the satisfaction of the Tribunal for condoning the delay. There is restriction upon the Tribunal not to go beyond the statutory provisions made in the Act of 1952 while dealing the appeal. Discretion to condone delay as provided after initial prescribed period of 60 days is subject to causes which prevented the Appellant to file appeal with in prescribed limitation of 60 days only. Tribunal has no power to exercise it's discretion to condone beyond 120 days from the date of issuance of the impugned order. Date of section 7-A order is 25.08.2022 date of communication of order is 26.8.2022 date of receipt by the Appellant is 28.8.2022 as per version of the EPF Authority. Facts reveal that the appeal is not filed within initial and basic limitation of 60 days from the date of communication of the order. So far as appeal within the further extended period of limitation is concerned it requires cause to be assigned which prevented the appellant to file the appeal within time to the satisfaction of the court. It is not satisfactory explanation that the AR of the appellant went to the office of the Respondent and got the copy of the order. It is not on the sweat will of the appellant to decide on its own when and how to collect the copy of order suiting to itself, so as to create fresh limitation-Hence application is dismissed. Appeal is also not admissible as barred by limitation.

M/s. Shakuntalam Education Society Appellant v. APFC/RPFC, Delhi (East) No. D-1/56/2022 Dt/- 28.04.2023.

2023-IV-LLJ-572 (SC)

IN THE SUPREME COURT OF INDIA

Coram:

Hon'ble Mr. Justice J.K.Maheshwari and

Hon'ble Mr. Justice K.V.Viswanathan

C.A.No.6611 of 2015 6th November.2023

Jyotirmay Ray ...Appellant

Versus

Field General Manager, Punjab National Bank and Others ...Respondents

Provident Fund-Denial of Contribution-Appellant compulsorily retired as Sr. Manager, denied benefit of leave encashment, employer's contribution of provident fund, gratuity and pension by Bank-Single Judge denied benefit of pension as Appellant was not in service Candidate when scheme for shifting to pension regime became operational-Whether denial of employer's contribution of Provident Fund and non-payment of gratuity to Appellant because of order of compulsory retirement, justified-Held, provisions of Gratuity Act have superiority over all other provisions of Regulations Gratuity shall become payable to every officer on retirement, death, disablement or on resignation except in a case of termination of service in any other way, by way of punishment after completion of 10 years of continuous service-Facts of case at hand are not case of riotous behavior of appellant or his involvement in any criminal case-While dealing with issue of for forfeiture of employers' contribution of provident fund in enquiry report, no finding regarding causing loss to bank or on quantification of amount of loss has been recorded-Prior to passing of order of forfeiture of gratuity, opportunity of hearing has not been afforded to Appellant-Appeal allowed.

JUDGMENT

J.K. Maheshwari, J.

Appellant, who was compulsorily retired as Sr. Manager, was denied the benefit of leave encashment, employer's contribution of provident fund, gratuity and pension by the Punjab National Bank (hereinafter referred to as the "Bank"). On rejection of his representation by the

authorities, a challenge was made by filing a writ petition before the High Court. The said writ petition was contested by the Bank, taking the plea that due to irregularities in granting loans and cash credit facilities under the Credit Guarantee Fund Trust Scheme for Micro & Small Enterprises (for short "CGTMSE") and otherwise in routine loans, loss was caused to the Bank.

2. The background facts were that earlier, the appellant was charge-sheeted on 16.10.2009 and also served with a supplementary chargesheet on 20.11.2009. On submitting of reply by the appellant, departmental enquiry was conducted and the enquiry report dated 11.01.2010 was submitted to the disciplinary authority who found him guilty and vide order dated 29.01.2010, penalty of compulsory retirement was inflicted. The appeal filed by the appellant was also dismissed by appellate authority on 28.07.2010.

3. The appellant by filing the writ petition did not challenge the order of compulsory retirement and only claimed the terminal benefits i.e., leave encashment, employer's contribution of provident fund, gratuity and pension. In the meantime, the review filed by the appellant before the appellate authority was also dismissed on 06.01.2011. During pendency of the writ petition, the Board of Directors of the Bank vide resolution dated 20.12.2010 refused to give employer's contribution of provident fund to the tune of ₹ 8,80,085/- to the appellant. Learned Single Judge vide order dated 03.04.2012 allowed the said writ petition in part and directed the Bank to release the employer's contribution of the provident fund as well as gratuity with interest @ 8.5% p.a. and leave encashment in terms of Regulation 38 of the Punjab National Bank (Officers') Service Regulations, 1979 (for short "1979 Regulations"). It was also clarified that the dues be calculated from the date of compulsory retirement and be released within a period of eight weeks from the date of communication. Learned Single Judge denied the benefit of pension because the appellant was not an in-service candidate when the scheme for shifting to the pension regime became operational.

4. On filing the Special Appeal by the Bank, the Division Bench allowed the same in part maintaining the order of grant of leave encashment, but set-aside the grant of provident fund (Bank's contribution) and gratuity on the pretext that by an act of the appellant, loss has been

caused to the Bank.

5. In view of the foregoing facts, grant of leave encashment to appellant is no more res integra. The appellant is not challenging the refusal to grant pension as he was not an in-service candidate at the time of change of scheme. The only question that falls for consideration is whether the denial of employer's contribution of Provident Fund and non-payment of gratuity to appellant because of the order of compulsory retirement, as directed by the impugned order, is justified or not?

6. Mr. Irshad Ahmad, learned counsel appearing for the appellant contends that Rule 13 of the Punjab National Bank Employees' Provident Fund Trust Rules (for short "P.F. Trust Rules") gives first lien to the Bank on the contributions made by it to recover any loss, damages and liabilities which the Bank may at any time sustain or incur by reasons of any dishonest act, deed or omission or gross misconduct by a member of the provident fund. It is submitted that in the main chargesheet or in the supplementary chargesheet, it is not alleged that due to grant of loan under the scheme or in other loans, any loss has been caused to the Bank. In the report of enquiry, finding of loss having been caused to the Bank has not been recorded. Learned counsel contends that the Board of Directors unilaterally passed a resolution which has rightly been interfered with by the learned Single Judge.

7. Learned counsel contends that while reversing those findings, the Division Bench has not assigned any cogent reason or even discussed the issue. It is also submitted that the Punjab National Bank, Personnel Division, Head Office, New Delhi issued Circular No. 1563 on 16/01/1997 having due reference to the provisions of the Payment of Gratuity Act, 1972 (for short "Gratuity Act") and payment under the 1979 Regulations. Explanation to clause 14(1)(a) of the said circular makes it clear that the gratuity is payable on termination of service to an officer on completion of at least 10 years of service. It is clarified that the said termination should not be by way of punishment as dismissal or removal. Learned Single Judge has rightly observed that Regulation 4 of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations 1977 (for short "1977 Regulations") makes it clear that a dismissal of an employee

shall ordinarily be a disqualification for future employment whereas removal from service shall not be a disqualification for future employment. It is also stated that no aggravating circumstance of causing loss by appellant or finding as to loss being caused has been recorded in the enquiry. There was no quantification of loss or damage. It is urged that on inflicting a penalty of compulsory retirement after enquiry, ipso facto would not result in forfeiture of the gratuity as directed by the impugned order. Even otherwise the forfeiture of gratuity affects the civil right of an employee having adverse consequence which cannot be directed in violation of the principles of natural justice.

8. Per contra, Mr. Rajesh Kumar Gautam, learned counsel for the respondent Bank argued in support of the findings recorded in the impugned order passed by the Division Bench and contends that the normal retirement of an employee cannot be equated with compulsory retirement inflicted by way of penalty. Therefore, gratuity and Bank's contribution towards provident fund have rightly been withheld by the order impugned. In support of his contention, reliance has been placed on the Full Bench judgment of the Punjab & Haryana High Court in LPA No. 566 of 2012 titled UCO Bank and Others v. Anju Mathur decided on 07.03.2013. It is urged that the said judgment was cited and relied upon by the High Court of Delhi in B.R. Sharma v. Syndicate Bank and Others LNIND 2015 DEL 7459: 2015 SCC Online Del 13989. Learned counsel has also placed reliance on the judgment of this Court in Canara Bank and Another v. Lalit Popli (Dead) through Legal Representatives (2018) 11 SCC 87.

9. We have heard learned counsel for the parties at length. The issue of payment of provident fund (Bank's contribution) and payment of gratuity and its forfeiture are required to be analysed with reference to the relevant provisions of the Act, Rules, Regulations and the circulars issued by the Bank from time to time. They are being considered in the subsequent subheadings and the paragraphs.

GRANT OF PROVIDENT FUND AND WHEN IT CAN BE FORFEITED:

10. Chapter IX of 1979 Regulations deals with the terminal benefits. As per Regulation 45(1), every officer shall become a member of the

Provident Fund constituted by the Bank and shall be bound by the Rules governing such fund. The Rules governing such fund are known as P.F. Trust Rules. As per Rule 2 of the Trust Rules, the contribution of the employee and employer shall be deposited in the provident fund trust account, which shall be a contributory provident fund. Rules 13 and 14 whereof are relevant for the purpose of this case and are reproduced as thus:

> "13. The Bank shall have first lien on the contributions made by it to the individual account of any member together with interest thereon or accretions thereto, to recover any loss, damages and liabilities which the Bank may at any time sustain or incur by reasons of any dishonest act, deed or omission or gross misconduct of or by such member.
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> 14. In case where the Bank shall have first lien as provided in Rule No. 13 above, the Trustees shall on receipt of the resolution passed by the Bank's Board of Directors pay to the Bank out of such member's individual account in the Fund, such portion thereof not exceeding the Bank's contribution to it, as the Board might ask the Trustees to pay, and the receipt of the Bank for any payment so made, shall be complete discharge to the Trustees. In the event of any such payment, the remaining amount out of the Provident Fund balance shall be paid to him. The recovery of such losses by the Bank shall be limited to the extent of such financial loss only."
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> On perusal, it is clear that the Bank shall have first lien on the contributions made by it to the individual account of any member together with interest thereon or accretions thereto, to recover any loss, damages and liabilities, sustained any time by the Bank or incurred by reasons of any dishonest act, deed or omission or gross misconduct of the member. It is further apparent that the Board of Directors shall pass an order to pay the contribution of the Bank which is in the account of fund to the Bank to the extent of recovery of the loss, damages and liabilities.

11. Let us apply the said Rules to the facts of the present case in the context of the allegations made in the chargesheet dated 16.10.2009

and supplementary chargesheet dated 20.11.2009 to consider the position that emerges.

12. It was alleged that while granting the loans or extending cash credit facilities under the CGTMSE or otherwise, due diligence of the procedure was not followed by the appellant. In the charge-sheet, it is not alleged that by such an act, the Bank has suffered loss nor has the quantification of the amount of loss been done. In the report of enquiry, finding about loss being caused or quantification of the amount of loss has not been recorded. The contribution of Bank to provident fund was forfeited as per resolution dated 20/12/2010 of the Board of Directors based on the communication dated 19/11/2010 as referred by the learned Single Judge. The said resolution refers that the Bank has suffered a loss of ₹ 77.59 lakhs by an act of the appellant for which the penalty of compulsory retirement has been directed. However, the recommendations were made for appropriation of the Bank's contribution of provident fund to the tune of ₹ 8,80,085/- and it was withheld from the provident fund account of the appellant. By filing this appeal, the appellant has averred and produced the report of the internal auditor dated 27/7/2009 (Annexure P-1). The said report was of the prior date, from the date of issuance of the chargesheet. However, relying on the said report, it is submitted that no loss has been caused to the Bank. It is contended that nothing is alleged towards loss in the chargesheet.

13. In the counter affidavit to this appeal, it is stated that the Report (Annexure P-1) was not part of the record of the writ petition before the High Court and without an application to take the additional evidence on record, it cannot be read by this Court. On perusal of the averments of the counter affidavit, the existence of the report (Annexure P-1) has not been denied by the respondents. In the finding of the enquiry report, quantification of the loss caused is not recorded. The resolution of the Board of Directors dated 20/12/2010 is subsequent to the order of penalty of compulsory retirement. Thus, prior to the chargesheet as per report of the internal auditor, loss has not been reported to the Bank. Presumably, it appears to us, for the said reasons in the chargesheet, allegations causing loss and quantifying the amount of loss have not been specified. The Board of Directors on the basis of information unilaterally passed the resolution alleging loss of ₹ 77.59 lakhs. Prior to passing the resolution,

notice asking response and opportunity was not afforded to the appellant. In the facts as discussed, the unilateral report cannot be relied upon by the Board of Directors to deny the benefit of payment of employer's contribution of provident fund. In this view of the matter, learned Single Judge was right in observing that the Board of Directors has not afforded an opportunity to the appellant on the issue of causing loss or damage to the Bank, prior to the passing of the resolution of appropriation of the contribution of the Bank from the provident fund account of the appellant. Moreover, in the absence of any allegation in the chargesheet about the quantifiable amount of loss, the argument as advanced by respondents is bereft of any merit. In view of the above discussions, the findings recorded by learned Single Judge with regard to payment of Bank's contribution of provident fund is equitable, just and is liable to be upheld, setting aside the findings of the Division Bench.

PAYMENT OF GRATUITY AND WHEN IT CAN BE WITHHELD:

14. Regulation 46 of Chapter IX of 1979 Regulations deals with gratuity. The relevant extract of the said Regulation is reproduced as thus:

"46. Gratuity:

46.(1) Every officer shall be eligible for gratuity on:

a) retirement

b) death

c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank

d) resignation after completing ten years of continuous service; or

e) termination of service in any other way except by way of punishment after completion of 10 years of service.

15. In view of the above, an officer of the Bank shall be eligible for

gratuity on retirement; death; disablement rendering him unfit as certified by an approved medical officer; resignation after completion of 10 years of continuous service or termination of service after completion of 10 years except in a case if such termination is by way of punishment. However, the said Regulations are silent on the contingency as to what would happen if an officer is met with a penalty of compulsory retirement.

16. Further if we look at Section 4 of the Gratuity Act, it elucidates the conditions of payment of gratuity to an employee on termination of his services. In particular, sub-section (6) of Section 4 highlights the conditions when gratuity can be withheld to an employee on his termination. The relevant portion has been reproduced as under:

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

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

(b) the gratuity payable to an employee shall be wholly forfeited

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

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

17. The provisions of Gratuity Act make it clear that forfeiture of gratuity may be directed to the extent of damage or loss so caused or destruction of property belonging to employer. In twin situations where the termination is due to riotous or disorderly conduct or involvement of the employee in a criminal case involving moral turpitude, the gratuity shall be wholly forfeited.

18. This Court in the case of Y.K. Singla v. Punjab National

Bank and Others (2013) 3 SCC 472, while considering the issue of interest on the late payment of gratuity to a retired employee of Punjab National Bank held that the payment of Gratuity Act will override the Punjab National Bank (Employees') Pension Regulations, 1995 (for short "1995 Pension Regulations"). While dealing with the issue of recovery from gratuity under Regulation 46 or withholding of pension under Regulation 46(2) of the said Regulations, this Court in paragraph 22, after referring to Section 14 of the Gratuity Act, has held as under:

"22. In order to determine which of the two provisions (the Gratuity Act, or the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:—

14. Act to override other enactments, etc. – The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."
(emphasis supplied)

A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant."

19. In view of the above, it is apparent that the provisions of the Gratuity Act have superiority over all other provisions of Regulations.

20. The Bank harmonizing the provisions of Regulation 46 of 1979 Regulations and the Gratuity Act issued Circular No. 1563 on 16.01.1997 through its personnel division. Therein harmonizing the Regulations with the provisions of the Gratuity Act and in clauses 8 and 14 of the Circular, the instances as to when gratuity could be forfeited, have been specified. Those clauses are relevant and have been reproduced as under:

"8. FORFEITURE OF GRATUITY UNDER ACT

The gratuity payable under the payment of Gratuity Act, is liable to full or partial forfeiture under different circumstances. Section 4(1) of payment of Gratuity Act deals to payment of gratuity whereas section 4(6) of the act deals with forfeiture of gratuity. Section 4(1) reads as under:

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five Years,

a. On his superannuation, or

b. On his retirement or resignation, or

c. On his death or disablement due to accident or disease.

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

Section 4(6) provides as under:

"Notwithstanding anything contained in subsection (1)

a. The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employee, shall be forfeited to the extent of the damage or loss so caused:

b. The gratuity payable to an employee may be wholly or partially forfeited.

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

II) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

14. PAYMENT UNDER OFFICERS SERVICE REGULATIONS

Rules relating to payment of gratuity of officers staff have been laid down under Regulation 46 of PNB Officers Service Regulations, 1979 which is as under:—

(I) Every officer shall be eligible for gratuity on:

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

Explanation: We have to clarify that gratuity may be paid in case of termination of service, subject to the condition that the officers has put in at least 10 years of service with the bank and provided that the termination is not by way of dismissal or removal from service as punishment.

(II) The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.

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

Pay for the purpose of gratuity in case of officer shall mean basic pay only. While calculating gratuity, that part of PQA & FPA drawn by an officer, which rank for superannuation benefit, shall also be taken into account.

Note: If the fraction of service beyond completed years of service is six months or more, gratuity will be paid pro-rata for the period. In this connection, we have to clarify that for the purpose of calculating gratuity, the number of days, beyond 6 months period is also to be taken into account.

On a combined reading of the provisions of the Gratuity Act, 1979 Regulations and the circular, it becomes clear that the gratuity shall become payable to every officer on retirement, death, disablement or on resignation except in a case of termination of service in any other way, by way of punishment after completion of 10 years of continuous service.

21. At this stage, it is relevant to refer to the provisions of 1977 Regulations. Regulation 4 of the said Regulations specifies major penalties:—

"Major penalties:

(f) ……..

(g) ……..

(h) Compulsory retirement;

(i) Removal from service which shall not be a disqualification for future employment;

(j) Dismissal which shall ordinarily be a disqualification for future employment."

The explanation to Regulation 4 under the heading ***"Major Penalties"*** specifies some of the situations which shall not amount to penalty within the meaning of this Regulation. As those conditions are not relevant for the present case, they are not being referred to.

22. Under Regulation 4 of the 1977 Regulations, the compulsory retirement of an officer is a major penalty. The explanation as given in clause 14(1)(a) of the said Circular clarifies that in case of termination after at least 10 years of service in the Bank, if such termination is not by way of punishment as dismissal or removal, the gratuity may be paid. In the said explanation, the denial of gratuity to an employee, who is inflicted with the major penalty of compulsory retirement, has not been included. Therefore, the gratuity is payable to the appellant under the 1979 Regulations in terms of the explanation under the said Circular. Even otherwise, if we see the provisions of the Gratuity Act, gratuity can be withheld in case of damages or loss so caused or destruction of property belonging to the employer or otherwise where the termination of service is due to riotous or disorderly conduct or due to criminal case involving moral turpitude.

23. The facts of the case at hand are not a case of riotous behaviour of appellant or his involvement in any criminal case. As discussed hereinabove, while dealing with the issue of forfeiture of employers' contribution of provident fund in the enquiry report, no finding regarding causing loss to the bank or on quantification of the amount of loss has been recorded.

24. While passing an order of withholding of gratuity, opportunity of hearing has not been afforded to the appellant. In this regard, the judgment of the Full Bench of Punjab & Haryana High Court in UCO Bank and Others v. Anju Mathur (supra) is relevant, wherein the Full Bench has duly considered the issue of forfeiture of gratuity and the relevant paras of the said judgement are reproduced as under:

> "22. ……. No doubt, in the chargesheet as many as 24 accounts are mentioned where the respondent had given loans or other financial accommodation either beyond her powers or without obtaining proper securities. That would show that certain accounts were overdrawn. Even the operation of these accounts was not satisfactory. However, whether the appellant-Bank ultimately suffered loss and what was the actual loss is not reflected. No doubt, the irregularities committed by the respondent may have exposed the Bank to such losses. However, that is entirely different from loss having been actually

suffered by the bank. Even if some accounts became bad and the Bank had to file suits for recovery concerning those accounts against the defaulting parties, that would not automatically lead to the conclusion that the loss/damage has been suffered. It is possible that Bank is able to recover full money in those proceedings. Whether that happened in fact or not and whether loss is actually suffered or not is not discernible from either the chargesheet or the enquiry report.

23. It is for this reason that it was incumbent upon the appellant-Bank to mention specifically about the actual loss having been suffered, if it suffered, in the show cause notice itself with particulars of that loss in order to enable the respondent to meet the same. That has not been done even in the final order. Though the figure of 4 crores is given, in the final order, even that is not substantiated by giving particulars thereof. We are, therefore, of the opinion that the show cause notice or the final orders passed, forfeiting the gratuity, do not meet the legal requirements and have to be set aside."

25. In the facts of the present case, the said judgement squarely applies looking to the situation wherein the quantification of loss has not been proved in the enquiry. Even otherwise, prior to passing of an order of forfeiture of gratuity, opportunity of hearing has not been afforded to the appellant. We acknowledge the view taken by the Full Bench in the said judgment and reaffirm the same.

26. The counsel for appellant also relied upon the judgement of B.R. Sharma v. Syndicate Bank and Others (supra), in which the riotous behaviour of the employee was found proved. However, the said judgment does not apply in the facts of the present case. Similarly, reliance was also placed on the case of Canara Bank and Another v. Lalit Popli (Dead) through Legal Representatives (supra) wherein as per the Regulations of the Canara Bank, the withholding of the amount of gratuity to the extent of loss caused was permissible. In the facts of the present case and contents of Regulations and Circular of the Bank, the said judgment being distinguishable, has no application. The learned Single Judge has correctly observed that as per the 1977 Regulations, compulsory retirement; removal from service which shall not be a disqualification for future employment and dismissal which shall ordinarily be a disqualification for future employment are distinct

and separate punishments. The act of forfeiture of gratuity is not envisaged in the present case as the provisions are silent on the aspect of forfeiture in case of compulsory retirement. As per Circular No. 1563 dated 16.01.1997 of the Bank, in our view, the Division Bench erred in reversing the judgment of the learned Single Judge.

27. Therefore, taking a wholistic view of the 1977 Regulations, 1979 Regulations, Circular dated 16.01.1997 and the facts on record, we are of the view that the present civil appeal deserves to be allowed. We affirm the findings of the learned Single Judge and set-aside the judgement rendered by the Division Bench. The appeal is allowed. No order as to costs.

Appeal allowed.

[2023 (179) FLR 868]
(DELHI HIGH COURT)
GAURANG KANTH, J.
W.P. (C) No. 3643 of 2003
June 2, 2023
Between
STATE BANK OF INDIA
And
PRESIDING OFFICER and another

Industrial Disputes Act 1947-Section 25-F-Evidence Act 1872-Section 45-Punishment of discharge-Imposed by Disciplinary Authority and was approved by Appellate Authority –Learned Tribunal held discharge illegal-Awarded for reinstatement with full back wages along with 9% interest with continuity in service and all consequential benefits-Hence instant writ petition by Bank-Charge of forgery upon the employee-Enquiry Officer held the evidence of handwriting expert not acceptable-Disciplinary Authority should not have gone ahead with that weak piece of evidence-In the absence of corroboration, the shaky evidence of handwriting expert could not be relied upon-Disciplinary Authority had not recorded proper reasoning (based on evidence on record) to justify its conclusion-Appellate Authority instead of recording its own reasons simply reproduced the findings of the Disciplinary

Authority-Learned Labour Court also found that enquiry was neither fair nor proper and there was a violation of principles of natural justice-No attempt was made by the petitioner to adduce any additional evidence before the Labour-Court Interference with the award was available to the High Court only when there was any fundamental flaw-Conduct of the petitioner showed bias towards respondent No.2-No interference warranted with the award-Writ petition dismissed.[Paras 38 to 52]

JUDGMENT

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 back wages 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 charge-sheet 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 Idyog 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 his 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 back wages 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 mala fide.

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 & Ors. 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 charge 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, 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 & ors.

18. He also relied on the judgment of the U.P. State Transport Corp & ors. v. A.K Parul 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 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. 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 and Bank of India v. Degala Suryanarayana 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 Back wages, it is the contention of the learned counsel for the Petitioner that the learned Labour Court while awarding back wages and directing reinstatement did not apply its mind to the question of entitlement to back wages and there was no rational basis whatsoever for awarding full back wages 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

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 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 his 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 mala fide 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 mala fide 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 mala fide 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 mala fide 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 mala fide 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 mala fide 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 charge 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 Ghaziabad 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 along with 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, 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 Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam and Kaushalya Devi v. Bachittar Singh.

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-IV-LLJ-585 (SC)
LNIND 2023 SC 606
IN THE SUPREME COURT OF INDIA
Coram:
Hon'ble Mr. Justice Hrishikes Roy and
Hon'ble Mr. Justice Sanjay Karol
C.A.No, 2518 of 2012
3rd October, 2023

State Bank of India and Others ...Appellants
Versus
P.Zadenga .....Respondent

Stay in Departmental Proceedings-Criminal Proceeding-Disciplinary proceeding initiated against Respondent with issuance of Memorandum for issuing fake challan-Division Bench upheld order of Single Judge and confirmed setting aside of disciplinary proceedings, hence, present appeal –Whether clause of Memorandum of Settlement creates bar on departmental proceedings continuing when person subjected thereto is being tried before criminal court for offences of same origin-Held, if prosecution commences later in point of time to disciplinary proceedings, latter shall be stayed, but not indefinitely-Such proceedings to be stayed only for reasonable period of time –Filing writ petition challenging action was belated attempt only to forestall its implementation-Completion of trial must be construed as completion "within the reasonable time frame"-Completion of trial concerning crime registered in year 1996 was nowhere nearing completion-Departmental proceeding pending criminal trial would not warrant automatic stay unless complicated question of law is involved-Clause 4 of MoS does not envisage complete standstill of departmental proceedings as result the pendency of criminal proceedings-Nature of proceedings being wholly separate and distinct, acquittal in criminal proceedings does not entitle delinquent employee for any benefit in departmental proceedings.- Appeal allowed.

JUDGMENT

Sanjay Karol, J.

The instant lis presents two questions for consideration by this Court.

They are-

a) Does clause 4 of the Memorandum of Settlement dated 10th April 2002 create a bar on departmental proceedings continuing when the person subjected thereto is being tried before a criminal court for offences of the same origin?

b) Does acquittal in some of the connected proceedings entail a benefit in the surviving proceedings? Further, inuring a right upon the delinquent employee of automatic discharge in disciplinary proceedings?

2. This appeal, by way of special leave, is directed against the final judgement and order dated 7th January 2009 passed in Writ Appeal No.03/2006 by which the order passed in Writ Petition (Civil) No.12 of 2005 dated 25th July 2005 allowing the appeal of the Respondent herein against the order of dismissal from bank services dated 28th March 2003 and the rejection of the departmental appeal vide order 16th August 2004, was allowed and the order of the Learned Single Judge confirmed.

Background

3. The facts of the instant dispute as they emanate from the record are:-

3.1 The respondent namely P. Zadenga was employed in the State Bank of India as Assistant (CAT) at the Dawrpui Branch, Aizawl. Three government retailers lodged a complaint with the Aizawl Police Station that their challan- deposits with the said Branch had not been entered into the cash receipt scroll. The District Civil Supply Officer, Aizawl West, also lodged a complaint that a certain retailer had taken the delivery of particular food stuff using a fake challan.

3.2 Pursuant thereto, disciplinary proceedings were initiated against the respondent with the issuance of a Memorandum dated 8th December 1999, wherein it was alleged that he had received ₹ 61,908 for a deposit on 19th April,1996 in respect of which a challan was issued, but the amount never deposited in the respective account. Two other similar occurrences dated 21st February 1995

regarding ₹ 24,640 and ₹ 27,412 were also alleged.

3.3 Three different FIRs stood registered against him, under which he was arrested but later released on bail. In his written show cause to this Memorandum, the Delinquent employee contended that the disciplinary proceedings should be either dropped or closed since criminal cases were pending him, arising from the same set of transactions.

3.4 The appellant-bank proceeded to appoint an inquiry officer who, in his report, submitted that three out of four charges stood established. The Delinquent Employee, again denying the charges, filed a response to that but was eventually dismissed from the services at the bank, vide the order of dismissal dated 28th March 2003. The departmental appeal filed by him, after due opportunity of hearing, was dismissed on 16th August 2004.

4. Aggrieved by the dismissal of the departmental appeal, the delinquent employee filed Writ Petition (Civil) No.12 of 2005 before the Gauhati High Court. The question before the said Court was: whether, in view of the Memorandum of Settlement dated 10th April 2002, the disciplinary proceedings against the delinquent employee (respondent) herein ought to have been stayed or not.

5. Having recorded that post signing of the said MoS, the Shastri Award as confirmed by the Desai Award "ceased to exist for all intents and purposes" the Court observed that clause 4 of the said document was clear and unambiguous and, therefore, it was not correct for the bank to have subjected him to disciplinary proceeding during the pendency of criminal proceedings.

6. However, it would be open for the disciplinary authority to act under the clauses of the MoS after the criminal cases against the delinquent employee having reached a conclusion, one way or the other.

7. Dissatisfied by the order of the learned Single Judge, a Writ Appeal was filed bearing No.03 of 2006. Having discussed the background of the case, the Division Bench discussed the contention on behalf of the bank regarding the applicability of the Shastri Award and observed that the continuation of the disciplinary proceedings during the pendency of criminal cases would be an infraction, given para

521(3) thereof.

8. In conclusion, the Division Bench upheld the order of the learned Single Judge and confirmed the setting aside of the disciplinary proceedings.

The Present Appeal

9. We have heard Mr. Vikas Singh, learned senior counsel for the appellant bank and Mr. Jitendra Bharti for the delinquent employee.

10. Inviting attention to several decisions rendered by this Court, it is argued on behalf of the appellant-bank that (i) initiation of departmental proceedings binding criminal trial would not amount to an automatic stay unless, of course, a complicated question of law is involved in the matter; (ii) acquittal in a criminal trial in relation to the very same impugned action would not preclude the employer to initiate departmental proceedings; and (iii) mere non-compliance of the provisions of bipartite agreement, in attending facts, would not result in the disciplinary action to be void ab initio.

11. On the other hand, it is argued on behalf of the delinquent employee that the disciplinary proceedings, the subject matter of the instant lis, were in gross violation of the bipartite agreement, which has been held to have the force of law. In any case, Respondent stand acquitted in two out of three criminal trials. Also, the action initiated by the employer was belated and an afterthought only to harass the delinquent employee.

12. Before proceeding to the merits of the issue at hand, it would be appropriate to reproduce clause 4 of the MoS dated 10th April 2002, which is the bone of contention in this dispute, for the delinquent employee contends an apparent embargo on proceedings with disciplinary enquiry when criminal cases arising from the same transactions are pending, and the appellant-bank submitting to the contrary of there being no such restriction. Clause 4 reads as under:

> "If after steps have been taken to prosecute an employee or get him prosecuted, for an offence, he is not put on trial within a year of the commission of the office, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined below;

provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 11 and 12 infra relating to discharge, but he shall out below in Clauses 11 and 12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months' pay and allowances in lieu of notice as provided in Clause 3 above. If within the pendency of the proceedings thus instituted is put on trial, such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 3 above shall apply."

(Emphasis Supplied)

13. In respect of the interpretation of clause 4, we find this Court to have observed in State Bank of India and Others. v. Neelam Nag LNIND 2016 SC 376 : (2016) 9 SCC 491 : AIR 2016 SC 4351, as follows:-

"21. In the plain language of Clause 4, in our opinion, it is not a stipulation to prohibit the institution and continuation of disciplinary proceedings, much less indefinitely, merely because of the pendency of a criminal case against the delinquent employee. On the other hand, it is an enabling provision permitting the institution or continuation of disciplinary proceedings, if the employee is not put on trial by the prosecution within one year from the commission of the offence or the prosecution fails to proceed against him for want of any material.

22. As can be culled out from the last sentence of Clause 4, which applies to a case where the criminal case has in fact proceeded, as in this case, for trial. The term "completion of the trial" thereat, must be construed as completion of the trial within a reasonable time-frame. This clause cannot come to the aid of the delinquent employee-who has been named as an accused in a criminal case and more so is party to prolongation of the trial."

14. Against this backdrop, it is also imperative that we look into the position of law regarding two proceedings of similar origin continuing simultaneously.

14.1 This Court in State of Rajasthan v. B.K. Meena and Others 1997-I-LLJ-746 : LNIND 1996 SC 1572 : (1996) 6 SCC 417 : AIR 1997 SC 13 referred to some decisions on the aspect of stay on disciplinary proceedings and observed :-

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course."

(Emphasis supplied)

14.2 Further, this Court in M Paul Anthony v. Bharat Gold Mines Ltd. LNIND 1999 SC 319 : (1999) 3 SCC 679 : AIR 1999 SC 1016 elucidated the following principles in dealing with departmental and criminal proceedings simultaneously:-

a. No bar exits on both proceedings continuing simultaneously,

though in an appropriate, separate forum.

b. If said proceedings are on identical/similar facts and if the charges levied against the delinquent employee are of a serious nature, then it would be desirable if the departmental proceedings are stayed till the conclusion of the other.

c. The nature of the charge or the involvement of complex questions of law and fact depends on the facts and circumstances of each case, i.e., the offence, nature of the case launched, evidence and material collected.

d. Sole consideration of the above-mentioned factors cannot be the reason to stay the departmental proceedings.

e. It must be remembered that departmental proceedings cannot be unduly and unjustly delayed.

f. If the criminal proceedings are delayed, the other, having been stayed on account thereof, may be resumed to conclude the same at the earliest. This may result in two possibilities: either the vindication of the position of the delinquent employee or he being found guilty, enabling the department concern to show him out the door.

14.3 The view taken in M. Paul Anthony v. Bharat Gold Mines Ltd. (supra) was referred to by this Court in Karnataka Power Transmission Corpn. Ltd. v. C. Nagaraju (2019) 10 SCC 367.

15. As is evident from the judicial pronouncements referred to above, it may be desirable or, in certain circumstances, advisable for disciplinary proceedings to be stayed when criminal proceedings are ongoing; however, stay is not "a matter of course" and is only to be given after consideration of all factors, for and against.

16. Keeping in view State Bank of India and Others v. Neelam Nag (supra), the following essentialities may be culled out for the operation of clause 4 -

a. At least one year ought to have passed since attempts to get the delinquent employee prosecuted;

b. If, after the passage of such time, no prosecution is initiated, then the department may proceed in accordance with its procedure for disciplinary action;

c. If the prosecution commences later in point of time to the disciplinary proceedings, the latter shall be stayed, but not indefinitely. Such proceedings are to be stayed only for a reasonable period of time, which is a matter of determination per the circumstances of each case.

17. The next aspect we must consider is whether an acquittal in one of the proceedings entails an acquittal in the other.

17.1 In Nelson Motis v. Union of India 1992-II-LLJ-744 : LNIND 1992 SC 561 : (1992) 4 SCC 711 : AIR 1992 SC 198 it was observed that the question whether departmental proceedings could have continued in the face of acquittal in criminal proceedings had no force as "the nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."

17.2 In Karnataka Power Transmission Corpn. Ltd v. C. Nagaraju (supra) it was observed:

> "9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764] In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. [State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417] (Emphasis supplied)

17.3 This observation was quoted with profit in the State of

Karnataka v. Umesh (2022) 6 SCC 563.

18. It is a matter of record that concerning the incident(s) in question, the FIR was registered sometime in 1996, and disciplinary proceedings were initiated on 8th December 1999. With the completion thereof in the year 2002 and pursuant to further completion of formalities mandatorily required to be complied with, including the principles of natural justice, the delinquent employee was dismissed from service with the passing of the order dated 28th March 2003.

19. An appeal preferred by the delinquent employee was also dismissed in 2004. It is only after the completion of the entire process of disciplinary proceedings that the delinquent employee, in February 2005, seeking reliance upon clause 4 of the MoS, filed a writ petition challenging the action, which, to our mind, was a belated attempt, only to forestall its implementation.

20. Repetitive as it may sound, we reiterate the principle of law enunciated in State Bank of India and Others v. Neelam Nag (supra) that the completion of trial must be construed as completion "within the reasonable time frame" and that the clause cannot come to the aid of the employee "more so", for "prolongation on the trial". In the instant case, the completion of the trial concerning the crime registered in the year 1996 is nowhere nearing completion.

21. As a principle of law, we have already observed that a departmental proceeding pending criminal trial would not warrant an automatic stay unless, of course, a complicated question of law is involved. Also, acquittal in a criminal case ipso facto would not be tantamount to closure or culmination of proceedings in favour of a delinquent employee.

22. Having perused the delinquent employee's response to the initiation of inquiry proceedings, most significantly, we notice that no plea of MoS was ever taken. No specific plea of postponement of disciplinary proceedings awaiting conclusion of a criminal trial was made.

23. It is seen that the officer neither pleaded nor indicated the prejudice caused to him as a consequence of the initiation of criminal proceedings or simultaneous continuation of both proceedings.

24. Applying all of the above-noted principles to the facts of the case, we find that neither was it the case of the delinquent employee that the trial to which he was subjected to begin within one year of the commission of the offence nor does the record speak to this effect. It is in the inquiry report, dated 3rd December 2001, that an objection to the disciplinary proceedings being conducted while a criminal case was being tried is registered, but even there, no date stands specified.

25. Further, it is not the case of the delinquent employee that the principles of natural justice were not complied with in the disciplinary proceedings of the bank.

26. Both these aspects, taken along with the fact that it is not mandatory to stay the disciplinary proceedings, particularly when they have been initiated after the prescribed period of one year, we cannot bring ourselves to agree with the courts below. The restriction within clause 4 is not complete and is to be applied on facts. In such a situation, the Division Bench's reliance on United Commercial Bank and Others. v. P.C. Kakkar,2003-II-LLJ-181 : LNIND 2003 SC 181 : (2003) 4 SCC 364 : AIR 2003 SC 1571 is entirely misconceived. Contrary to the conclusion arrived at by the High Court in Writ Appeal, United Commercial Bank and Others v. P.C. Kakkar (supra) furthers the position of the appellant-bank as it states, "acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in the criminal case."

27. Surprisingly, having referred to United Commercial Bank and Others v. P.C. Kakkar (supra), which takes the above-mentioned position, the High Court, in the very next paragraph, takes a diametrically opposite view without any reasoning to that. We may, in fact, refer to United Commercial Bank and Others v. P.C. Kakkar (supra) to reiterate what is expected of persons employed in a bank while also observing that the conduct of the delinquent employee herein flies in the face of these principles. This Court noted : -

"14. A bank officer is required to exercise higher standards of

honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank... The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct."
(Emphasis Supplied)

28. Given the foregoing discussion and in the light of judicial pronouncements discussed supra, the appeal succeeds. We set aside the judgment and order dated 7th January 2009 passed in Writ Appeal No.03/2006, and consequentially, the order passed in Writ Petition (Civil) No.12 of 2005 dated 25th July 2005.

29. The questions presented in this appeal are answered as under:

29.1 Clause 4 of the MoS dated 10th April 2002 does not envisage a complete standstill of departmental proceedings as a result of the pendency of criminal proceedings. The position of law is that the stay of the latter is desirable, but the same is to be affected only for a reasonable period of time.

29.2 The nature of proceedings being wholly separate and distinct, acquittal in criminal proceedings does not entitle the delinquent employee for any benefit in the latter or automatic discharge in departmental proceedings.

30. Consequently, Mr. P. Zadenga's dismissal from service as per the Memorandum dated 28th March 2003 (D.P.S.No.2003/02) is restored.

31. Interlocutory Applications, if any, stand disposed of.

32. Parties to bear their own costs.

Appeal allowed.

[2024 (180) FLR 4]
(SUPREME COURT)
ABHAY S. OKA and PANKAJ MITHAL, JJ.
Civil Appeal Nos. 5529-5530 of 2023
September 13, 2023
Between
B.C.NAGARAJ and another
and
STATE OF KARNATAKA and others

Pay-scale-Constitution of India, 1950-Articles 136 and 141-Benefit of revised U.G.C. pay-scale-Appellants were denied the benefit of Government Order dated 15.11.1999-High Court dismissed their writ petition-Hence instant appeal-In similar matter learned Single Judge passed order in favour of one N. Ramesh-Matter went upto Supreme Court which was finally decided in favour of N. Ramesh-State Government had not filed any review petition-Held, once Government accepted the judgment in the case of N. Ramesh and benefits were granted-There was no reason why the appellants should be denied the same relief when similar employees were given similar benefits-Impugned judgment quashed-Similar benefits to the appellant within three months-Benefits would be given to the pending cases only-No benefits to those retired employees who had not challenged the action till date-Appeal allowed.[Paras 8 to 12]

JUDGMENT

FACTUAL ASPECTS

ABHAY S. OKA,J.- The appellants were employed initially as Physical Instructors in Government Grade Colleges in Karnataka. The first appellant reached the selection grade pay scale of the University Grants Commission (UGC) on 1st January 1986. The second appellant was granted senior scale of pay on 1st January 1986 and selection grade of pay from 13th July 1990. The first appellant was superannuated on 31st January 1998, and the second appellant was

superannuated on 31st May 2004. Both, at the time of retirement, were selection grade Physical Education Directors in the State Government colleges.

2. On 15th November 1999, the State Government issued an order revising the pay scale of Teachers, Librarians and Physical Education Directors in the Government colleges. Under the said Government order, the benefit of the University Grants Commission (UGC) pay scales as revised from 1st January 1996 was granted to these three categories of employees with retrospective effect from 1st January 1996.On the same day, by a separate order, the benefit of the revised pay scale was granted to Teachers, Librarians and Directors of Education in the Government-aided colleges. The order dated 15th November 1999 was partially modified on 29th July 2000. A circular was issued by the Government of Karnataka on 23rd October 2001 stating that physical education and library personnel drawing UGC pay scales of 1996 shall not be granted other government benefits under the Government Order dated 15th November 1999.

3. The appellants were denied the benefit of the Government Order dated 15th November 1999. Therefore, the appellants filed an application before the Karnataka Administrative Tribunal, which was rejected. They filed a Writ Petition before the High Court to challenge the order of the Tribunal. Writ Petition was dismissed by the impugned judgment. The impugned judgment relies upon a Government Order dated 4th July 2008, which records that the revised UGC pay scale shall be extended from 27th July 1998 notionally and all financial benefits shall be extended prospectively from 4th July 2008, and no arrears shall be paid.

SUBMISSIONS

4. The learned counsel appearing for the appellants pointed out that one Shri N. Ramesh, who retired as a Director of Physical Education (selection grade), was granted the benefit of the Government Order dated 15th November 1999. He superannuated on 28th February 2006. Later on, the benefits granted to the said employee were sought to be recovered from him, and therefore,

he filed a Writ Petition before the High Court. The High Court held that the benefit of the revised UGC pay scale was rightly extended earlier to the said employee, and therefore, the High Court, by judgment and order dated 13th February 2009, directed that all benefits be extended to him. He pointed out that the Division Bench confirmed the said order in a Writ Appeal filed by the respondents, and a Special Leave Petition filed against the orders has been dismissed. Placing reliance on the documents annexed to the application for permission to file additional documents (IA No.61474 of 2022), he submitted that even in 2014, full benefits under the Government Order dated 15th November 1999 were extended to similarly placed employees.

5. Learned Additional Advocate General appearing for the State of Karnataka submitted that the orders passed in the Writ Petition filed by Shri N. Ramesh are per incuriam since the Government Order dated 4th July 2008 which incorporated the clarification issued on 19th October 2006 by UGC was not brought to the notice of the Courts. He pointed out that by a judgment and order dated 29th April 2011 passed by the Division Bench of Karnataka High Court in Writ Appeal No.234 of 2007 (State of Karnataka and another. v. Puttaswamy and Ors.), the benefit of the Government Order dated 15th November 1999 was denied to the similarly placed employee on the basis of the order dated 19th October 2006 of UGC. He submitted that the order dated 4th July 2008 issued by the State Government is in terms of the order of UGC dated 19th October 2006, which lays down that the benefit of revised pay scales with effect from 1st January 1996 shall be extended from 27th July 1998 notionally and all financial benefits shall be extended prospectively from 4th July 2008 and that the employees will not be entitled to arrears. The learned Additional Advocate General, therefore, submitted that the view taken by the High Court is fully justified.

FINDINGS AND CONCLUSIONS

6. It is not in dispute that the case of Shri N. Ramesh in Writ Petition No. 5855 of 2008, decided by the learned Single Judge of Karnataka High Court on 13th February 2009, was similar to the present

appellants. The learned Single Judge held that the said Shri N. Ramesh was entitled to the benefit of the revised UGC pay scale from 1st January 1996 based on the order dated 15th November 1999. Shri N. Ramesh had superannuated on 28th February 2006 as Physical Education Director from a Government aided college. The judgment of the Karnataka High Court attained finality as a Writ Appeal preferred against the judgment and the Special Leave Petition have been dismissed.

7. It appears that the Order dated 19th October 2006 issued by UGC and the Order dated 4th July 2008 issued by the State Government were not pointed out to the learned Single Judge who decided Writ Petition of Shri N. Ramesh on 13th February 2009. Even in the appeal before the Division Bench and in the Special Leave Petition before this Court, both the orders were not brought to the notice of the Court. The State Government never applied for the review. It is true that in the subsequent decision of the Division Bench of the same High Court dated 29th April 2011 in Writ Appeal No. 234 of 2007, the High Court noted the directions issued by the UGC on 19th October 2006 and the Government Order dated 4th July 2008 based on the directions of UGC and held that the Government employees were not entitled to a revised pay scale with retrospective effect.

8. It must be noted here that the State Government implemented the order in the case of Shri N. Ramesh. In another order passed by a learned Single Judge of Karnataka High Court on 30th July 2012, in Writ Petition No. 62679 of 2012 and other connected matters (Irayya & Ors. v. The Secretary & Ors.), a direction was issued in favour of the similarly placed employees who were entitled to revised UGC pay scales with effect from 1st January 1996 along with all consequential benefits. The order was confirmed by a Division Bench by an order dated 27th August 2013.

9. Along with the same application, the appellants have produced a copy of the order dated 7th January 2014 in the case of one Shri K.C. Patil and Shri S.H. Hallur, who were retired librarians. By the said order, the two librarians, who were similarly placed as the appellants, were granted the benefit of the revised pay scale from 1st January 1996 along with consequential benefits in terms of the

order dated 15th November 1999. Therefore, not only in the case of Shri N. Ramesh but even thereafter in 2014, to the employees who were similarly placed as the appellants, the benefits of the revised UGC pay scale in terms of the Government order dated 15th November 1999 were granted.

10. The State Government ought to have applied for review of the order of this Court in the case of Shri N. Ramesh. However, the Government had allowed the said order to become final. Notwithstanding the Government Order of 4th July 2008, as can be seen from the additional documents, the benefit was granted to the employees who were similarly placed with the appellants even on 7th January 2014. It was a conscious decision of the State Government to accept the decision of the High Court in the case of Shri N. Ramesh. Now, the State Government cannot rely upon the Government Order dated 4th July 2008, which was not pointed out to the Courts which dealt with the case of Shri N. Ramesh as the State Government accepted the judgment in the case of Shri N. Ramesh and granted benefits to him of the Government Order dated 15th November 1999. There is no reason why the appellants should be denied the same relief, especially when even as of 7th January 2014, the same benefit was granted to the similarly placed employees.

11. Accordingly, the impugned judgment dated 9th October 2017 is hereby quashed and set aside. We direct the State Government to extend the benefits under the Government Order dated 15th November 1999 to the appellants within a period of three months from today. The appeals are, accordingly, allowed on the above terms with no order as to costs.

12. We make it clear that this judgment will apply to all cases, pending before either the Administrative Tribunal or High Court, of similarly situated employees in which a similar relief is claimed. However, this judgment shall not be used to file new cases by retired employees who have been denied the benefit and who have not challenged the action till date. No case, which has been concluded, shall be reopened on the basis of this judgment.

Appeal Allowed.

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