

41. **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of order: May 22, 2008

**LPA 1909/2006 & CM No.12687/2006 (stay) &
CM No.17470/2006 (cross-objections)**

UNITED BANK OF INDIA Appellant
Through: Mr. Suhail Dutt, Advocate.

versus

P.K.DUGGAL (THRU LR) Respondent
Through: Mr. R.K. Saini, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

1. This appeal is directed against an order dated 31st July, 2006 passed by the learned Single Judge allowing Writ Petition (C) No. 3227 of 1987 filed by the Respondent. The writ petition had been filed challenging an award dated 28th November, 1986 answering the reference made to it against the Respondent passed by the Industrial Tribunal ('Tribunal'). In effect the Industrial Tribunal held that the action of the United Bank of India (the

appellant herein) in not reinstating the Respondent with effect from 1st August, 1976 with back wages, despite his having been exonerated of all the charges in an enquiry conducted by the Narang Bank of India Limited ('NBIL') (which was taken over by the appellant), was justified.

2. During the pendency of the writ petition, the Respondent died and his legal representative Smt. Kamlesh Duggal was brought on record. The total sum payable, in terms of impugned judgment of the learned Single Judge, to the Respondent was Rs.2,72,000. Pursuant to the order dated 17th October, 2006 passed by this Court, the said sum was deposited in this Court by the appellant. It has been kept in a fixed deposit that has been renewed from time to time. Smt. Kamlesh Duggal, the legal representative of the Respondent, has filed C.M. No. 17470 of 2006 as cross objections in the appeal for grant of interest on the amount due to the Respondent for the period it remained unpaid.

3. The Respondent P.K. Duggal was employed with NBIL as a Special Assistant. With effect from 28th January, 1976 the Respondent was placed under suspension on alleged charges of misappropriation of funds and fabrication of documents. A show cause notice was served on him on 21st April, 1976.

4. On 25th July, 1976 an agreement was entered into between the

appellant and NBIL whereby the assets and liabilities of the latter were taken over by the appellant. As per the agreement dated 25th July, 1976 employees of the NBIL who were under suspension were also to be taken over by the appellant. The relevant clause in this regard reads as under:

“(b) The Transferee shall not, however, be bound to take over or absorb in their employment-(i) all such staff, assistants and employees against whom any shown cause notice or any action (penal or otherwise or any enquiry or any actions and/or proceedings whatsoever are pending on the said date by the Management or by any or Tribunal Court or otherwise and/or who are on the said date involved or figuring in any such enquiries, actions and/or proceedings and against whom any adverse or suspension order finding or decision has been passed or is likely to be passed prior to subsequent to the said date. (ii) Any such staff employees and assistants of the Transferor whose service have been terminated by the Transferor on or before the said dated and/or against whom any adverse or suspension order finding or decision has been passed by any person holding any enquiry or decision has been passed by any person holding any and/or Management of the transferor and/or by the Court, Tribunal or otherwise subsequent to the said date but prior to the formal taking over of the said business or assets or properties of the Transferor by the transferee on the basis of this Agreement.

Provided Nevertheless the Transferee shall take over suspended employees, if any, of the Transferor relating to the said business with effect from the said date and/or condition as hereinafter mentioned in Clause 20(a)/or

above in so far as the same shall be applicable if and only if such employee/employees is or are finally and ultimately absolutely/exonerated or acquitted from or of all the charges leveled against him/them.”

5. The enquiry officer appointed by the NBIL to adjudicate the show cause notice informed the appellant of the pendency of the disciplinary proceedings and required them to participate in the enquiry. However the appellant did not participate in the enquiry. The enquiry officer proceeded with the enquiry and submitted a report on 24th March, 1977 exonerating the Respondent of all the charges. The report recommended that he should be reinstated with immediate effect to the post of Special Assistant and paid full salary from the date of his suspension. The report was forwarded to the appellant on 25th March, 1977.

6. Since no action was taken by the appellant to reinstate him, the Respondent approached the statutory authorities with a complaint. By an order dated 28th December, 1979 the Central Government passed an order referring the following dispute for adjudication to the Tribunal:

“Whether the action of the management of United bank of India in not reinstating Shri P.K. Duggal, Special Assistant w.e.f. 1.8.76 with back wages inspite of its having been exonerated of all the charges by an enquiry conducted by Narang Bank of India Ltd. is legal and justified. If not, to what relief is the workman entitled.”

7. Before the Tribunal the NBIL contended that it did not owe any liability to the Respondent in view of the agreement dated 25th July, 1976. The appellant on the other hand contended that in terms of the proviso to Clause 2(b) of that agreement (extracted hereinabove) the Respondent had not yet been taken on to the rolls of the appellant. The appellant took the stand that the Respondent had not been absolved of the charges since according to it the proceedings before the enquiry officer was “no enquiry in the eyes of law”. The Tribunal made an Award on 28th November, 1986 holding that the enquiry held earlier was vitiated since NBIL had appointed the enquiry officer on 15th August 1976, after the date of take over and therefore he was not “a properly appointed officer”. Further, it was held that the enquiry was a “sham affair” and that no reasons were given for holding that the charges were not proved. The Tribunal observed that it is only the appellant which could have exonerated the Respondent and as long as the report of the enquiry officer had not been accepted by it, it could not be said that the Respondent stood exonerated. Accordingly it was held that the action of the appellant in not reinstating the Respondent was legal and justified.

8. Allowing the writ petition filed by the Respondent, the learned Single Judge held that the rejection by the Tribunal of the report of the enquiry officer was based on the surmises and conjunctures and “contrary to the record”. While quashing the said Award, the learned Single Judge held that

it “was based on no evidence and is beyond the reference” and that the Respondent was entitled to reinstatement in service in view of the proviso to Clause 2(b) of the agreement dated 25th July, 1976. Since the Respondent had expired on 27th September, 1989 during the pendency of the writ petition it was directed that the payment of all back wages till 1st August, 1986 and for the period thereafter till the date of the Respondent’s death or superannuation whichever was earlier was the responsibility of the appellant. The amount was directed to be paid to the widow of the Respondent and the writ petition was allowed with costs of Rs.10,000.

9. Mr. Suhail Dutt, learned counsel appearing for the appellant submitted that the learned Single Judge erred in holding that the Tribunal had travelled beyond the scope of the reference. He submitted that the proviso to Clause 2(b) of the agreement between the appellant and NBIL permitted the appellant to not absorb an employee of NBIL who had been placed under suspension till such time such employee was not “finally and ultimately/absolutely exonerated or acquitted from all the charges levelled against him/them”. According to him it was open to the appellant not to accept the report of the Enquiry Officer appointed by the NBIL, which resulted in exoneration of the Respondent. He further sought to support the Award of the Tribunal to the extent that it held that the earlier enquiry exonerating the Respondent was not an enquiry in the eye of law. Finally, relying upon the judgments in *Pramod Kumar v. Presiding Officer 123*

(2005) DLT 509 (DB), Allahabad Jal Sansthan v. Daya Shankar Rai IV
(2005) SLT 662, Kendriya Vidyalaya Sangathan v. S.C.Sharma AIR 2005
SC 768, Narinder Mohan Arya v. United India Insurance Co. Ltd. and
O.P.Bhandari v.Indian Tourism Development Corporation Ltd. AIR 1987
SC 111 it was contended that only 50% back wages should have been awarded.

10. This Court is unable to agree with the submissions of learned counsel for the appellant. The proviso to Clause 2(b) of the agreement dated 25th July, 1976 between the appellant and the NBIL cannot possibly give an unlimited power to the appellant whether or not to absorb the services of an employee placed under suspension by NBIL. That Clause is premised on the fact that the appellant would be required to take a decision on the report of the enquiry pending which the employee has been placed under suspension.

11. It needs to be recalled that the appellant chose not to participate in that enquiry. The appellant also did not challenge the report of the enquiry despite a copy of the report being submitted to it. The appellant unilaterally decided not to accept the report of the enquiry and chose to just keep quiet. It did not inform the Respondent of its decision not to accept the report. It is only when the Respondent referred the dispute for adjudication by the Tribunal that the appellant disclosed that it was not accepting the report of the Enquiry Officer. In the circumstances, this Court finds that the action of

the appellant was wholly unacceptable and the dispute referred to the Tribunal ought to have been answered in favour of the Respondent.

12. The learned Single Judge has, after perusing the record, come to the following conclusion:

“There is no discussion by the adjudicator of any of the evidence which was placed before it. It is certainly not open to any Court or Tribunal to substitute a specific term of agreement on any predilection of the adjudicator or assumption of moral authority or balance of convenience. The findings returned by the industrial adjudicator with regard to the report of the Enquiry Officer or its approval by the respondent no.3 are clearly based only on surmises and conjectures and are contrary to the record. Respondent no.3 has even filed a written statement in support of the enquiry report. Respondent no.2 has not issued even a letter of protest to respondent no.3 with regard to the inquiry report or any denial to the claim of reinstatement of the petitioner.”

13. After examining the records and considering the submissions of the learned counsel for the appellant, this Court is satisfied that no grounds have been made out for interference by way of an appeal. Having not participated in the enquiry and not challenged the report of the enquiry officer it was not open to the appellant to unilaterally decide not to implement such report. There is also no merit in the contention that only 50% back wages should have been ordered. Considering that the Respondent is no more, and the

amount involved is not very substantial, the direction to pay the full back wages calls for no interference.

14. Accordingly this Court finds no merit in the appeal. As far as the cross objections are concerned, the Court finds justification in the grievance of the legal representative of the Respondent that the money owing to the Respondent was due at least from the date of the report of the Enquiry Officer i.e. 24th March, 1977. The said report was forwarded to the appellant on 25th March, 1977. The deposit of the amount payable to the Respondent i.e. Rs.2,72,000/- was made by the appellant in this Court only some time in November 2006. Indeed the Respondent and his legal representative Smt. Kamlesh Duggal have been deprived of this amount from 25th March, 1977 till the date of its deposit in this Court by the appellant. Therefore Smt. Duggal is justified in seeking payment of interest on that amount for this period at a reasonable rate.

15. Accordingly this Court directs that the sum of Rs.2,72,000/- which has been deposited in this Court by the appellant and placed in a fixed deposit, should be paid to Smt. Kamlesh Duggal, with the interest accrued thereon by the Registry of this Court upon proper identification within a period of two weeks from today. The appellant is directed to pay Smt. Kamlesh Duggal, the legal representative of Respondent, a sum equivalent to 6% simple interest per annum on Rs.2,72,000/- for the period

commencing on 1st April, 1977 till the date of the deposit of the said amount in this Court by the appellant. The said amount of interest should be paid by the appellant to the Respondent No. 1 within a period of eight weeks from today and in any event not later than 23rd July, 2008.

16. The appeal and application for stay are accordingly dismissed. CM No. 17470 of 2006 stands disposed of.

CHIEF JUSTICE

S. MURALIDHAR, J

MAY 22, 2008
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