

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

+ **W.P.(C.) No. 4469/2007**

% **Date of Decision: 20th August, 2009**

CENTRAL BANK OF INDIA

..... PETITIONER

! Through: Mr. Ashish Wad, Advocate.

VERSUS

\$ SHRI SHYAM LAL JAIN

.....RESPONDENT

^ Through: Mr. M.K. Tripathy, Advocate.

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

This writ petition filed by the Central Bank of India (hereinafter referred to as the petitioner) is directed against an award of Central Government Industrial Tribunal (CGIT) dated 31.10.2006 in L.C.A. No. 129/2000 directing the petitioner management to calculate the Privilege Leave accrued to the respondent in between 14.03.1977 to 10.10.1994 and make payment of the same at his last drawn salary within 3 months from the date of the order.

2. Briefly stated the facts of the case relevant for disposal of this writ petition are that the respondent was appointed as a Clerk with the petitioner w.e.f. 31.08.1966. In the year 1975, when he was working at Madipur Delhi Branch of the petitioner Bank, he was served with a charge-sheet dated 20.06.1975 and a departmental inquiry was

instituted against him. He was placed under suspension, pending the said inquiry which culminated in his discharge by an order passed by the petitioner bank dated 14.03.1977. The respondent aggrieved by his discharge, raised an industrial dispute which was referred by the Central Government for adjudication to the Central Government Industrial Tribunal, New Delhi, which made an award dated 09.02.1989 setting aside the discharge of the respondent and directing his reinstatement with continuity of service and payment of 50% back wages to him.

3. The said award passed by the CGIT was challenged by the petitioner bank in this Court and this Court remanded the case back to the CGIT for fresh decision after giving an opportunity to the petitioner bank to lead evidence. Pursuant to the said order of this Court, the CGIT vide its award dated 15.03.1994 again directed reinstatement of the respondent but with 25% back wages. Consequent thereto, the respondent was reinstated in service by the petitioner bank w.e.f. 10.10.1994 and was also paid 25% of pay and allowances which he would have drawn from the date of his discharge till his reinstatement i.e. 14.03.1977 to 10.10.1994.

4. After the respondent was reinstated in service of the petitioner bank w.e.f. 10.10.1994, he, on reaching the age of superannuation, has retired from the service of the petitioner bank w.e.f. 06.09.1999. After his retirement, he filed a Legal Claim Application being LCA No. 129/2000 before the CGIT and claimed encashment of Privilege Leave standing to his credit earned by him during the period of his service with the petitioner bank. It is on this application of the respondent, the CGIT has passed the impugned order by which the petitioner management has been directed to calculate and pay to the respondent for the Privilege Leave accrued to him during the period from the date of his discharge,

i.e., 14.03.1977 till he was reinstated, i.e., 10.10.1994.

5. Mr. Ashish Wad, learned counsel appearing on behalf of the petitioner, has argued that the benefit of Privilege Leave during the period from 14.03.1977 to 10.10.1994, was not available to the respondent in view of Clause 13.17 of Bipartite Settlement according to which the Privilege Leave could have been earned by the respondent had he been in active service of the bank for the said period. The submission of Mr. Wad is that since the respondent did not do any work during the aforesaid period, he was not entitled to either Privilege Leave or for encashment of the same for the aforesaid period.

6. On the other hand, Mr. M.K. Tripathy, learned counsel appearing on behalf of the respondent, has argued that since the order for reinstatement of the respondent was with continuity of service, the respondent is deemed to be in the employment of the petitioner bank even during the period from the date of his discharge till the date of his reinstatement, i.e., the period between 14.03.1977 and 10.10.1994.

7. In view of the above rival submissions made by the counsel for the parties, the question that arises for consideration of the Court is whether the deemed service of the respondent can be equated with an active service for the purpose of grant of benefit of Privilege Leave. This question which has arisen in the present writ petition came up for consideration before the Full Bench of the Andhra Pradesh High Court in ***Andhra Bank and Another Vs. P. Balakrishna (died) 2005 (3) ALT 771***, wherein it was held as under:

“After going through various settlements of memoranda between the workmen and the employer, we are in no doubt to conclude that the privilege leave is intended for rest and recuperation and the workman has to render active service and thereby earn privilege leave to his credit. A workman out of service for any reason whatsoever is not entitled to privilege leave.”

8. Mr. Tripathy, learned counsel appearing on behalf of the respondent, could not cite any judgment to the contrary and, therefore, this Court feels itself bound by the Full Bench decision of the Andhra Pradesh High Court in the case of P. Balakrishna (supra).

9. In the light of the law laid down by the Full Bench of the Andhra Pradesh High Court and also having regard to the submissions made by the counsel for the parties, this Court is of the opinion that the impugned order of the CGIT suffers from perversity and has to be set aside. The impugned order of the CGIT dated 31.10.2006 in L.C.A. No. 129/2000 is, therefore, set aside and consequent thereto, the impugned recovery notice dated 22.05.2007 (Annexure-I at page 20 of the Paper Book) is also set aside. This writ petition is allowed. The parties are left to bear their own costs.

AUGUST 20, 2009
'bsr'

S.N.AGGARWAL, J