

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 1199/2007**

Sh. Ashok Kumar Petitioner
Through: Mr. R. S. Saini, Adv

Versus

Bank of India Respondent
Through: Mr. Rajat Arora, Adv.

Judgment pronounced on: 21.10.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The petitioner has filed the present writ petition under Articles 226 and 227 of the Constitution of India praying for a writ of *Certiorari* or *Mandamus* to quash the award dated 04.10.2005 passed by the Labour Court and to direct the respondent to reinstate the petitioner in service with full back wages and continuity of service with all the attendant benefits.

2. In this petition the petitioner has raised three vital questions of law and facts which are as follows :

- (i) Whether the chargesheet issued to the workman is vague, the Disciplinary Authority was prejudice against the workman and the dismissal of the petitioner illegal, invalid and without any basis or justification?
- (ii) Whether the case of the management without any evidence?
- (iii) Whether the petitioner is entitled to relief as claimed by him in the writ petition?

3. The brief facts are that the petitioner was chargesheeted vide charge sheet dated 2.1.1995 wherein it was alleged by the respondent against the petitioner that on 19.12.1993, which was a holiday, the petitioner entered the Zonal Office of the bank unauthorisedly and illegally with a duplicate key. The petitioner had entered the branch unauthorisedly with a view to steal the property of the bank kept in a gunny bag in the branch. However, when some other officers of the bank had reached the branch for some work, the petitioner ran away from the back window of the branch by jumping. In pursuant to the charge sheet dated 2.1.1995, a departmental enquiry was initiated in which the petitioner had participated and the charges levelled against the petitioner were held to be proved by the Enquiry Officer vide his report dated 21.8.1995.

4. As per report and finding the petitioner was issued a proposed punishment order dated 30.11.1995 and thereafter he was dismissed from the service vide order dated 29.1.1996 as per the punishment imposed upon him. Subsequently, the petitioner had also made an appeal before the appellate authority against the said order dated 29.1.1996 of the disciplinary authority. The appellate authority of the bank vide its order dated 10.1.1997 had upheld the punishment of dismissal imposed upon the petitioner.

5. Thereafter, the petitioner raised a reference before the Presiding Officer (Central Government Industrial Tribunal cum Labour Court II, Govt. of Ministry of Labour, New Delhi) and filed the statement of claim challenging the order claiming the same to be illegal and unjustified act of the bank management/respondent before the conciliation officer. The conciliation officer submitted

his failure report as the matter could not be settled between the parties and referred for adjudication before the Central Govt. The Ministry of Labour vide its letter dated 31.3.1998 has referred the following point for adjudication:

“Whether the action of the management of Bank of India in dismissing the services of Shri Ashok Kumar w.e.f. 29.01.1996 is legal and justified? If not, to what relief the said workman is entitled.”

6. The petitioner had filed the statement of claim before the Presiding Officer stating therein the facts of the case. The management had also taken steps to get the workman prosecuted in the very same matter by making FIR against him on 19.12.1993. Respondent had filed its reply before the Industrial Adjudicator and after hearing the parties, the reference was decided in favour of the respondent bank.

7. After perusal of the award passed by the Industrial Adjudicator it appears that learned Adjudicator after considering the rival submissions of the parties had reached the conclusion that the punishment awarded upon the petitioner is in commensurate with the gravity of charges. The Tribunal had discussed the incident dated 19.12.1993 in detail which reads as under:

“...The case of the management is that, that 19.12.1993 was Sunday and three officers of the Industrial Relations Department of the management Bank namely Sh. V.R. Krishnan, K.S. Mathur and Sh. Rajiv Singh were to attend the office to do certain substantial job urgent in nature. When the above three officers reached the office at 11.00 am on that Sunday Sh K.S. Mathur reached the office first and he found the locks of the main door of the Bank already opened and bolted from inside. It indicated that someone was inside the premises by opening the door. After several knocks when the door was not opened from inside Sh. Mathur became suspicious and shook the door heavily and the lock of the door gave way and the door was opened.

When he went inside the premises he found one set of keys along with the Bank's lock and also a pair of sleepers and he saw that one other officers reached the Bank. It was found on preliminary investigation that the person who jumped out was Shri Ashok Kumar, Safai Karamchari of the Bank. FIR on the same date was lodged against the CSE Sh. Ashok Kumar the Sweeper. It was subsequently traced that a gunny bag loaded with uniform materials and other goods and papers were kept in a packed condition in the premises of the Bank so a show cause notice was sent to Shri Ashok Kumar. Initially he admitted his guilt before the said officers. He had opened the gate of the Bank with an intention to commit theft but at the same time the three officers reached the Bank though it was Sunday for some urgent work. Notice to the workman was given and his explanation was obtained and a full fledged inquiry was conducted. The Inquiry Officer found the workman guilty of the charges levelled against him and the disciplinary authority gave personal hearing and thereafter punished him by dismissing him from the bank service. Appellate Authority also rejected his appeal.

...I have gone through the inquiry proceedings. It becomes quite explicit from the inquiry proceedings that the workman has been given sufficient opportunity to cross examine the witnesses and the witnesses have been cross examined. He has been supplied all the papers which had been relied upon by the Inquiry Officer. It also transpires from perusal of the inquiry proceedings that the Inquiry Officer considered the preliminary investigation report and relied upon the statement of MW-2 and MW-3. The workman applicant has been given opportunity for effective examination and principles of natural justice have been followed.

The findings of the Inquiry Officer is based mainly on the evidence of Sh. R.K. Duggal and Sh. K.S. Mathur. These witnesses were present when the incident of the attempted theft took place. Sh. D.P. Singh has also been examined so the Inquiry Officer has based his findings on the testimony of the three witnesses of the management. These witnesses have been cross examined.

It was submitted from the side of the CSE that copies of the preliminary investigations were not given to him. In his cross examination he has admitted that Shri Naresh Chaturvedi was his DR and copies of the statement relied upon during the course of inquiry has been given."

8. It is settled law that every responsible officer is required to maintain high degree of devotion and diligence to the duties. The bank in the present case has lost confidence in the petitioner who was caught inside the bank premises and as per the evidence deposed before the Enquiry Officer there is sufficient material in this regard and the petitioner's intention in the present case to steal the property of the bank itself is a grave misconduct and therefore, no sympathy can be granted by the Court under these circumstances. The reference in this regard is also made to the following cases:

1. ***Chairman & Managing Director United Commercial Bank & Ors. Vs. P.C. Kakkar***, AIR 2003 SC 1571. (para 14)
2. ***Damoh Panna Sagar Rural Regional Bank & Another Vs. Munna Lal Jain***, AIR 2005 SC 584. (paras 14, 15 & 17)

9. In view of the aforesaid facts and circumstances in the present case and the law laid down in the similar situation, this Court is not inclined to exercise its power to interfere with the well considered award in favour of the respondent. The respondent has referred to the following decisions in support of its submission:

- i. ***Calcutta Port Shramik Union Vs. Calcutta River Transport Association***, 1989 Vol. I LLN 1. (para 10)
- ii. ***Madhranatakam Cooperative Sugar Mills Vs. S. Viswanathan***, AIR 2005 SC 1954. (para 12 & 13)

a.) In ***Calcutta Port Shramik Union Vs. Calcutta River Transport Association (supra)***, it was observed as under:

“10. The object of enacting the Industrial Disputes Act, 1947, and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an Industrial Tribunal it has to be

presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by Industrial Tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the Tribunals by striking down awards on hyper-technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis.”

b.) In ***Madhranatakam Cooperative Sugar Mills Vs. S.***

Viswanathan (supra), it was observed as under:

“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

13. The Division Bench too in appeal, in our opinion, has committed the same error. May be, there was some justification, since if it had to allow the appeal, then it had to consider the points on facts decided by the learned Single Judge. In that process it also took up for consideration every bit of evidence that was considered by the Labour Court as well as by the learned single Judge and disagreed with the finding of the learned single Judge.”

10. There is no substance in the grounds made by the petitioner in the writ petition as the guilt of the petitioner has been proved by the Enquiry Officer which is quite justified.

11. It appears from the said facts and circumstances that the action of the respondent in dismissing the services of the petitioner is reasonable. There is no chance for interference with the award dated 4.10.2005 passed by the Presiding Officer.

12. The writ petition does not call for any interference. Under these circumstances, the writ petition is dismissed as the same is without any merit. No orders as to cost.

MANMOHANSINGH, J.

OCTOBER 21, 2010

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