

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

*Reserved on: 8<sup>th</sup> September, 2017*

*Pronounced on: 11<sup>th</sup> January, 2018*

**+ W.P (C) No. 8767/2004**

**INDIAN OVERSEAS BANK** ...Petitioner

Through: Mohd. Azhar, Adv.

versus

**UNION OF INDIA & ORS.** ..... Respondents

Through: Mr.Sudhanshu K. Choudhary,  
Adv. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT**

%

1. The impugned Award, dated 27<sup>th</sup> January 2004, passed by the learned Industrial Tribunal (hereinafter referred to as “the learned Tribunal”) holds the termination, of the Respondent No 2-workman Devender Singh (hereinafter referred to as “the workman”), by the petitioner-Bank (hereinafter referred to as “the Bank”), on 30<sup>th</sup> June 1988, to be “neither legal nor justified”. Consequently, the impugned Award directs the reinstatement of the workman with full back wages. The Bank is before this Court, by means of the present writ petition, thereagainst.

**The Facts**

2. On 26<sup>th</sup> October 1985, the workman was appointed as a temporary messenger with the Bank. He worked, as temporary

messenger, at Hathras, from 28<sup>th</sup> October 1985 till 7<sup>th</sup> April 1987, and as temporary messenger at Agra from 8<sup>th</sup> April 1987 till 30<sup>th</sup> June 1988.

3. The recital of facts, as contained in the writ petition, would seem to indicate that, on 30<sup>th</sup> of June 1988, it was detected that, after introducing Savings Bank (“S/B”) Account No 35531 of one Nudki Khan, the workman, allegedly fraudulently, withdrew, therefrom, Rs. 4500/- on 11<sup>th</sup> June 1988 and Rs. 4000/- on 20<sup>th</sup> June 1988. It is further asserted that, following thereupon, an oral enquiry was held on the very same day, (i.e. 30<sup>th</sup> June 1988), during the course of which the workman addressed a letter, to the Manager of the Bank, which has become focal to the present controversy. After denoting the subject of the letter as “A/c 35531 Nudki Khan”, the first two sentences of the letter, as handwritten in vernacular, read thus:

*“Maine oopar khate mein se 4500, 4000, nikale hain. Yeh paise Nudki Khan ke dwara nikala gaya hai.”*

These sentences would translate thus: “I have withdrawn 4500, 4000 from the above account. This amount was withdrawn by Nudki Khan.” Clearly, these two sentences are inherently contradictory to each other, inasmuch as the first sentence amounts to a confession, by the workman, that *he* had withdrawn the amounts of Rs. 4500/- and Rs. 4000/-, whereas the second sentence states that the said withdrawal had been effected by Nudki Khan. Though the rest of the letter does seem to indicate that the withdrawal was, in fact, by the workman, this slight ambivalence, nevertheless, cannot be ignored.

4. The said letter, as translated into English, reads thus:

“A/c 35531 Nudki Khan

I have withdrawn Rs. 4500/-, 4000/- from the above account. This amount has been withdrawn by Nudki Khan. I had to pay Nudki Khan Rs. 2000/-. He had deducted that sum and gave the rest to me. From the remaining amount with me I installed one hand pump, repaired the house walls and repaid my loans etc. I destroyed the ledger folio and the voucher. I have stated the above without any pressure on me and I accept the above on the voice of my soul.

Please grant me a loan of Rs. 8500/- which should be deducted from my salary. I assure you that I shall not repeat such wrong act in future.”

It may be noted, even at this juncture, that it was not seriously contested, by learned counsel appearing either for the petitioner or for the respondent, before me, that the aforementioned letter dated 30<sup>th</sup> June 1988 was, on its terms and holistically read, confessional in nature.

5. On 30<sup>th</sup> June 1988, an FIR was lodged, against the workman and Nudki Khan, by the Branch Manager of the Bank, at PS Nai Ki Mandi, drawing attention to the above alleged fraud committed by them. Consequent thereupon, the workman was arrested and, subsequently, released on bail.

6. The petitioner contends that, on 30<sup>th</sup> June 1988, the workman stopped attending duties, whereas the workman, *per contra*, contends

that, with effect from the said date, he was not permitted to report for work. The finding, of the learned Tribunal, in the impugned Award, is that the workman was terminated on 30<sup>th</sup> June 1988 and, this being a finding of fact, which is not seriously contested by the petitioner-Bank, I see no reason not to accept the same.

7. Consequent to the lodging of the aforementioned FIR, proceedings commenced in the Court of the Judicial Magistrate, Agra, before whom statements of witnesses were recorded, a sketch map of the place of incident was prepared and charge sheet was filed, against Nudki Khan and the workman, alleging commission of offence under Section 420 of the Indian Penal Code (“IPC”). Copies of the charge sheet were given to Nudki Khan and the workman, who pleaded innocence and sought trial.

8. Five prosecution witnesses (PWs) were examined during the course of trial. Having recorded their evidence, the learned Judicial Magistrate proceeded to acquit the workman, of the charge against him. The reasoning of the learned Judicial Magistrate deserves to be reproduced, *in extenso*, as under (reproduced from the English translation of the order, as filed before this Court):

“With regard to the first accused Devender Singh there is no eyewitness as against him and as per the prosecution all the evidence against him is his own statement. As per the accused Devender Singh has had not accepted to have committed any offence and the incident with regard to the Account No 35531 is mentioned and in the account No 35555 no fraud is stated to have taken place. The only evidence against Devender

Singh is that on being asked by the Sr. Manager with him (Devender) he has admitted his guilt. The statement has been given under section 161 Cr. PC and in the statements of the witnesses available on the file there is contradictions.

As per the prosecution Devender Singh himself had enhanced the amount in his account and he himself had removed the record, whereas at the time of passing the withdrawal form it is the responsibility of the Paying officer and the concerned clerk and the concerned officers, specially when the check or withdrawal is for the amount more than Rs. 2000/-, as in this case the amount of withdrawal forms were Rs. 4500/- in Rs. 4000/- respectively. Under section 24 of the Indian Evidence Act this fact is worth keeping in view that the person before him the accused is accepting the guilt, that person is in the situation of influencing him up to what extent, and this is the responsibility of the prosecution that the admission must have been made on own will and it should be appropriate in the light of the above section. Therefore, by extinguishing all the probabilities it may be taken that the willful admission has been made. The statement of the accused Devender Singh is before the Sr. Manager of the same Bank and the Manager has admitted that he has issued a Memo to the accused Devender Singh prior to that incident on 11.12.87. Although it has not come to the evidence that under that Memo any action was taken against the accused Devender Singh. In such circumstances when the accused is under the Sr. Manager of the same Bank, it cannot be said that the guilt must have been accepted on his own will or without any pressure. Thus *this type of accused cannot be punished only be admitting his guilt, because in the criminal cases it is the responsibility of the prosecution to prove the case against the accused beyond any doubt.* The prosecution is not proved against the accused Devender.” (Emphasis supplied)

9. Thereafter, the operative portion of the said order, of the learned Judicial Magistrate, reads as under:

“The accused Devender Singh is acquitted of the charge under section 420 IPC and the accused Nizammuddin alias

Nudki Khan is also acquitted of the charge under section 420 IPC by giving *him* the benefit of doubt. Their bail bonds are cancelled and the sureties are discharged.”  
(Emphasis supplied)

The use of the word “him”, in the above extracted operative portion of the judgement of the learned Judicial Magistrate, conveys the impression that, whereas Nudki Khan was acquitted by giving him benefit of doubt, the acquittal of the workman was honourable.

**10.** As per the workman, consequent on his acquittal, by the learned Judicial Magistrate, *vide* judgement dated 1<sup>st</sup> June 1992 *supra*, he approached the Bank, for reinstatement, but received no favourable response. He, thereafter, raised an industrial dispute, on 10<sup>th</sup> August 1994, which was referred to the Conciliation Officer. Conciliation proceedings took place on 29<sup>th</sup> September 1994, 11<sup>th</sup> November 1994 and 27<sup>th</sup> March 1995, but remained fruitless. The Conciliation Officer, accordingly, sent a failure report, dated 9<sup>th</sup> May 1995, to the Secretary, Government of India, Ministry of Labour.

**11.** Resultantly, the Ministry, *vide* letter dated 21<sup>st</sup> January 1997, made a reference, of the industrial dispute raised by the workman, to the learned Tribunal, referring the following issue to it for adjudication:

“Whether the action of the management of Indian Overseas Bank, Agra in terminating the services of Sh. Devender Singh, Messenger, Agra w.e.f. 30 of June 1988 is legal and justified? If not, to what relief is entitled to?”

12. Statement of Claim was filed by the workman before the learned Tribunal. It was contended, *inter alia*, therein, that the services of the workman had been dispensed with, by the petitioner, without any reason, and without issuance of any notice or conducting of any enquiry. The workman submitted that he had served the petitioner regularly from 29<sup>th</sup> October 1995 till 30<sup>th</sup> June 1988 and was the senior most temporary employee working with the petitioner. It was asserted that there was no substance, whatsoever, in the allegations levelled against him, as was borne out by his acquittal by the learned Judicial Magistrate. The “written apology” tendered by him, it was submitted, was involuntary, and could not bind him, as already held by the learned Judicial Magistrate. This being the sole evidence against him, the workman submitted that no case, for not allowing him to continue in service, could be said to be made out and that he was, therefore, entitled to be reinstated and continued in the employment of the petitioner.

13. The petitioner filed Written Statement, in opposition to the Statement of Claim filed by the respondent workman, contending that the workman had stopped coming to work w.e.f. 30<sup>th</sup> June 1988, and had approached the petitioner only on 30<sup>th</sup> June 1992. It was pointed out that he had filed his Statement of Claim seven years thereafter. As regards the allegation against the workman, it was contended that he had, after introducing the Savings Bank account of Nudki Khan on 4<sup>th</sup> June 1988, fraudulently withdrawn, therefrom, amounts of Rs. 4500/- on 11<sup>th</sup> June 1988 and Rs. 4000/- on 20<sup>th</sup> June 1988, and had, on his

involvement in such fraudulent withdrawal being detected, confessed his guilt and given a written letter of apology to the Manager. Accordingly, it was submitted that there could be no doubt regarding the complicity of the workman in the fraudulent withdrawal of money from the account of Nudki Khan.

14. The workman filed a rejoinder, basically reiterating the averments contained in his Statement of Claim and denying those contained in the Written Statement of the petitioner.

15. Arguments were, thereafter, advanced, before the learned Tribunal, by both parties. The workman argued that, at worst, all that could be laid at his door was introduction of the account of Nudki Khan. Nothing amiss could be said to exist therein, as Nudki Khan was a genuine person, and introducing his Savings Account was, therefore, not an offence. It was submitted that there was no evidence that the respondent had withdrawn any money from the said account, and attention was, in this regard, drawn to the fact that the withdrawal was under the signature of Nudki Khan himself. In such circumstances, discontinuing the workman's services, without even holding an enquiry against him was, it was submitted, *ex facie* unjustified and illegal. The workman also relied on his acquittal by the learned Judicial Magistrate, who had recorded a categorical finding that the confessional letter, on which the petitioner was placing reliance, had been written under undue influence and coercion by the petitioner. The judgement acquitting him, it was pointed out, had

never been challenged, no appeal having been filed thereagainst. Reliance was also placed, by the workman, on the evidence of MW-1, to the effect that there had been no written enquiry, and an oral enquiry alone was held against him. The workman drew attention to the fact that, whereas no evidence of any witness had been recorded by the petitioner, all witnesses had been examined, and their evidence duly appreciated, by the learned Judicial Magistrate. In such circumstances, the findings, and ultimate decision of the learned Judicial Magistrate, it was submitted, were binding on the Bank.

**16.** The learned Industrial Tribunal, after considering all the above facts, and submissions advanced before it, held that there could be no justification to deprive the workman of his right to serve the Bank, as the only evidence against him was in the form of his alleged confessional letter, dated 30<sup>th</sup> June 1988, which had already been found, by the learned Judicial Magistrate, to have been written under coercion and undue influence. Consequent on the acquittal of the workman, the offence alleged to have been committed by him, it was felt, had effectively become a nullity. The learned Tribunal took particular stock of the fact that the workman had neither been issued a charge-sheet, nor had any enquiry held against him, and that the basis, for discontinuing his service, was the FIR lodged against him by the Branch Manager, which had culminated in his acquittal. The *raison d'être* for keeping him out of service, it was therefore held, did not survive any move, effectively entitling the workman to reinstatement. The learned Tribunal also took note of the reliance, by the petitioner,

on the judgments in *Bharat Forge Co. Ltd. vs. A.B. Zodge and Another*, (1996) 4 SCC 374, *Shankar Chakravarti vs. Britania Biscuit Co. Ltd. and Another*, (1979) 3 SCC 371, *The Cooper Engineering Limited vs. Shri P.P. Mundhe*, (1975) 2 SCC 661 and *Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd vs. Management and others*, (1973) 1 SCC 813, but held that these decisions were distinguishable, inasmuch as, in the said cases, the workman had been found guilty of embezzlement, whereas, in the present case, neither was any such charge levelled against the workman, nor had there been any enquiry against him. Consequent on the above reasoning, the learned Tribunal directed that the workman be reinstated with full back wages.

17. The present writ petition has been filed, by the Management of the Bank, thereagainst.

18. I have heard Mr. Mohd. Azhar and Mr. Sudhanshu Kumar Choudhary, learned counsel for the petitioner and Respondent No 2, respectively. Learned counsel have reiterated their respective stands, as advanced before the learned Tribunal. Reliance was also placed, by Mr. Mohd. Azhar, on the judgement of the Supreme Court in *Hari Nandan Prasad vs. F.C.I.*, (2014) 7 SCC 190 to contend that, in any event, the learned Tribunal ought not to have awarded reinstatement with full back wages.

**19.** Mr. Azhar submitted that written submissions had already been filed by him; however, no such submissions are forthcoming on the record. Mr. Choudhary sought, and was granted four days time, to file written submissions; however, no such submissions have been filed till date. Accordingly, the petition is being decided on the basis of the record available before me and arguments advanced across the Bar.

**20.** The facts, as recorded hereinabove, are minimal, and the controversy narrow. The only issue to be decided is whether the learned Tribunal rightly held the refusal, on the part of the petitioner, to allow the Respondent No 2-workman to join duty, to be unjustified and, consequently, whether the direction, by the learned Tribunal, that the workman be reinstated with full back wages, could sustain on facts and in law.

**21.** This, in turn, can be divided into the two following distinct issues:

- (i) Was the decision, of the learned Tribunal, to declare the “termination”, of the services of the workman, justified?
- (ii) If so, to what relief was the workman entitled?

**22.** What is being sought, by the petitioner from this court, is a writ of *certiorari*, setting aside the impugned Award passed by the learned Tribunal. Though a high prerogative writ, *certiorari* has its well-defined contours, which were, perhaps, most illuminatingly delineated

in the following passages, from *Syed Yakoob vs. K. S. Radhakrishnan*, AIR 1964 SC 477:

“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 in properly, as for instance, it decides a question without giving an opportunity to 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 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.*

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.*” (Emphasis supplied)

**23.** *Certiorari* jurisdiction, it is well recognized, is not appellate in nature. It hinges on the principle of “plausibility”. If the view, of the authority below, has travelled beyond the peripheries of “possibility”, and entered the realm of “plausibility”, the hands of this Court are tied.

24. What, then, is the distinction between “possibility” and “plausibility”? Perhaps “plausibility” may best be understood as residing midway between “possibility” and “probability”. If, therefore, the view of the authority below is not merely a possible view, in that any other person might also harbour it, but is also “plausible”, in that there is a *likelihood* of such a view being taken, this court is proscribed from interfering therewith. The *possibility*, of another view being taken on the same facts, is an *entirely irrelevant consideration*. In fact, one may go to the extent of saying that, if the court exercising *certiorari* jurisdiction finds that the view of the authority below is a plausible one, it must rest its inquiry at that point, and go no further. Any further examination of the facts would clearly be an attempt to discover whether any other view could be taken, which is totally opposed to the very concept of *certiorari* jurisdiction.

25. Yet another pre-requisite, required to be fulfilled before interference with an order passed by a lower judicial authority by issuance of a writ of *certiorari*, as highlighted the passages from ***Syed Yakoob (supra)***, extracted hereinabove, is the existence of an apparent error of law, in the judgement of the authority below. That is to say, the lower authority had to proceed on a manifestly erroneous legal premise, or a principle which is jurisprudentially is unacceptable, apparent from the record.

26. Such are the nuanced mechanics of *certiorari*.

27. The extent to which a writ court can interfere with, or reverse, the award of the Labour Court or Industrial Tribunal, is also an issue which is no longer *res integra*. I have myself had occasion to examine the law on the issue earlier, as expounded in various authorities of the Supreme Court, notably, ***Management of Madurantakam Cooperative Sugar Mills Ltd. vs. S. Viswanathan*, (2005) 3 SCC 193, *P.G.I of Medical Education and Research, Chandigarh v. Raj Kumar*, (2001) 2 SCC 54 and *M.P State Electricity Board vs. Jarina Bee*, (2003) 6 SCC 141**, wherefrom the following definitive principles, on the issue, emerge:

- (i) The Labour Court/ Industrial Tribunal is the final fact finding authority.
- (ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/ unacceptable evidence.
- (iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/ Industrial Tribunal, before proceeding to do so.
- (iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

- (v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.
- (vi) “Perversity”, for its part, is attributed to a judicial/ quasi judicial decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality.
- (vii) In examining whether a decision is, or is not, perverse, the classic test, of the reasonable man’s conclusion on the facts before the authority concerned would apply.
- (viii) Inadequacy of evidence, or the possibility of reading the evidence in a different manner, would not amount to perversity.

**28.** Tested on the above touchstone, it is apparent that the impugned Award, as the learned Tribunal, cannot be said to be suffering from any such apparent error of law, or fact, or otherwise perverse, as would justify interference, with the findings recorded therein, in exercise of the power of *certiorari*. Had disciplinary proceedings, and criminal proceedings, both been initiated against the workman, it might have been possible for the petitioner to contend that the findings of the criminal court could not bind the disciplinary authority, keeping in view the different standards of proof applicable to the two proceedings. This position, in law, is trite, and does not require further elucidation. Such, however, is not the position obtaining in the instant case. Neither has any charge sheet been

issued, by the Bank, to the workman, nor were, at any stage, any enquiry proceedings initiated against him. The sole ground for not allowing him to join work was the lodging of the FIR, against him, on 30<sup>th</sup> June 1988. Having chosen, thus, to swim with the FIR, the Bank would have, necessarily, to sink with it, too. The FIR culminated in the acquittal of the workman. The alleged confession letter, dated 30<sup>th</sup> June 1988, which represents the sum total of the evidence, against the workman, as relied upon by the Bank, was found, by the learned Judicial Magistrate, not to be reliable. Whether the said finding was legally acceptable, is, though highly questionable, not an issue which arises in the present proceedings, for the simple reason, that the Bank never chose to appeal against the judgement of the learned Judicial Magistrate. Having thus elected to accept the verdict of the learned Judicial Magistrate, it is not open to the Bank to accept it in part. The verdict, as a whole, would bind the Bank. Here, it merits reiteration that, had Bank initiated its own domestic enquiry/disciplinary proceedings, against the workman, it would certainly have been permissible for the Bank, to urge that, in the said proceedings, it was not bound by the finding, of the learned Judicial Magistrate, to the effect that the confession letter, dated 30<sup>th</sup> June 1988, was unreliable, especially as the said finding was returned in the context of Section 26 of the Indian Evidence Act, 1872, which would not, directly, apply to a domestic enquiry/disciplinary proceedings. There were, however, no disciplinary proceedings, initiated against the workman by the Bank which, apparently, was sanguine about the possible outcome of the criminal proceedings initiated by it. No occasion, therefore, arose, to

apply a different standard of proof, against the workman, regarding the admissibility, or acceptability, of the confessional letter, dated 30<sup>th</sup> June 1988, written by him.

**29.** The *raison d'etre* for the decision not to allow the workman to continue in service beyond 30<sup>th</sup> June 1988, being the FIR, lodged against him, by the Branch Manager of the Bank on that date, stood completely eroded, with the acquittal, of the workman, by the learned Judicial Magistrate, in the criminal proceedings which followed upon the said FIR. The letter, dated 30<sup>th</sup> June 1988, written by the workman, which might have acted as the provocation for the Bank to keep the workman out of service, stood discredited by the learned Judicial Magistrate. The said decision of the learned Judicial Magistrate having been accepted by the Bank, no justification remained, for not allowing the workman to rejoin duty.

**30.** Neither can it be said that the workman had abandoned his services, as the cessation of duty, by him, with the Bank, was coterminous with the lodging of the FIR, against him, by the Bank, both having occurred on 30<sup>th</sup> June 1988. Further, consequent to his acquittal by the learned Judicial Magistrate, the workman reported for work with the petitioner, but was, admittedly, not allowed to do so. This fact, too, militates against any presumption of the workman having abandoned his work. Rather, the ground position, apparently, was that, by not allowing him to work after 30<sup>th</sup> June 1988, the Bank, possibly justifiably – in view of his suspected involvement in

fraudulent withdrawal of money from the account of Nudki Khan – did not desire to continue to retain him in employment. Legally, of course, the Bank ought to have issued, to the workman, a letter, removing him from service or terminating his services; no such letter, however, was issued. Be that as it may, having not chosen to initiate any domestic enquiry or disciplinary proceedings against him, it was incumbent on the Bank to reinstate the workman in service, consequent to his acquittal by the learned Judicial Magistrate. With his acquittal, no further justification, to keep him out of service, remained.

**31.** In the circumstances, it cannot be said that the learned Tribunal erred, on facts and law, in directing the reinstatement of the workman. At the cost of reiteration, I may clarify that I am not examining the possibility of another view possibly being adopted on the facts, as any such examination would breach the boundaries of *certiorari* jurisdiction.

**32.** The reliance, by learned counsel for the petitioner, on the judgement of the Supreme Court in *Hari Nandan Prasad (supra)*, is not exactly apposite. That was a case in which the issue was one of retrenchment, and of non-compliance with the mandate of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”), while doing so. Inasmuch as the present case is one where the workman’s services were terminated as a disciplinary measure – albeit without any formal enquiry or disciplinary proceedings – the

termination cannot be regarded as “retrenchment” within the meaning of clause (oo) in Section 2 of the Act. To that extent, ***Hari Nandan Prasad (supra)*** is clearly distinguishable. However, there is substance, in the contention of learned counsel for the petitioner, that reinstatement of the workman with full back wages was not justified. The predominantly prevalent view, of the Supreme Court on the issue is that, where the termination of the workman is set aside, and a number of years have lapsed in the interregnum, reinstating the workman in service with back wages is not appropriate. The proper relief to be granted in such cases, as held by the Supreme Court in, *inter alia*, ***Senior Superintendent Telegraph (Traffic) vs. Santosh Kumar Seal, (2010) 6 SCC 773*** and ***Rashtrasant Tukdoji Maharaj Technical Education Sanstha v Prashant Manikarao Kubitkar, MANU/SC/0745/2017***, is to grant lump sum compensation in lieu of reinstatement with back wages.

**33.** In conclusion, it is made clear that this order is being passed in the peculiar circumstances of the present case. There can be no gainsaying the proposition that continuance, of a delinquent bank employee in service, where the delinquency impinges on his, or her, integrity, is unthinkable. While deciding this petition, however, my discretion is constricted by three circumstances, viz. (i) that the sole ground on which the petitioner-Bank did not allow the respondent to work, beyond 30<sup>th</sup> June 1988, was the initiation of criminal proceedings against him, *vide* the FIR lodged by the petitioner against him on the said date, (ii) the said proceedings culminated in the

respondent's acquittal, which was accepted by the petitioner-Bank, which did not choose to appeal thereagainst, and (iii) no disciplinary proceedings were ever initiated, against the respondent, by the petitioner. Law, it is trite, frowns upon the indolent. When these circumstances are cumulatively seen, it appears manifestly unjust to deny, to the respondent, the fruits of his success before the learned Judicial Magistrate.

**34.** Accordingly, while upholding the impugned Award of the learned Tribunal on merits, the impugned Award is partly modified, to the extent of substitution, of the relief of reinstatement with back wages, as awarded to the respondent-workman by the learned Tribunal, with lump sum compensation, quantified at Rs. 3 lakhs, to be paid to the workman by the petitioner within a period of four weeks from the date of receipt of certified copy of this judgement.

**35.** In the circumstances of the case, there shall be no order as to costs.

**C. HARI SHANKAR  
(JUDGE)**

**JANUARY 11, 2018**  
*neelam/nitin*