

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 1033 of 2011
Date of Decision: July 6th , 2015

State Bank of India

..... Petitioner

Versus

Central Govt.Industrial Tribunal-cum-Labour Court and another
..... Respondents

CWP No. 1052 of 2011

State Bank of India

..... Petitioner

Versus

Central Govt.Industrial Tribunal-cum-Labour Court and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kapil Kakkar, Advocate
for the petitioner-non-applicant.

Mr. Pankaj Maini, Advocate
for the respondent-applicant.

Amit Rawal, J.

This order of mine shall dispose of two writ petitions as common question of law and fact involves in both the writ petitions. For the sake of convenience facts are taken from CWP No. 1033 of 2011.

The State Bank of India has knocked the door of this Court by invoking the provisions of Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari quashing the award dated 17.8.2010 (Annexure P-4) in CWP No. 1033 of 2011 and (Annexure P-5) in CWP No.1052 of 2011.

Mr. Kapil Kakkar, learned counsel appearing on behalf of the petitioner submitted that respondent No.2 in both the aforementioned writ petitions joined the Bank on temporary basis in the year 1970 and 1980 respectively. Rameshwar Dass-workman in CWP No. 1033 was working as Daftri in the Treasury Branch and whereas Madwa Nand-workman in CWP No. 1052 of 2011 as Messenger. Both the officials along with other officials of the Bank connived in perpetration of fraud by mis-utilizing the proceeds of cheques payable to the Govt. Department on a number of occasions and on finding such conduct of the aforementioned officials, the action was treated as gross misconduct and vide letter dated 13/20.9.2003 were charge sheeted.

Both the respondents submitted reply to the charge sheet but the same was not found satisfactory and a regular enquiry was initiated against the workmen and after going through the evidence on record, the enquiry officer submitted a report dated 4.8.2004 and 10.8.2004 and found that the workman connived with J. P. Ranga, the officer in respect of entries as contained in the charge sheet. Copy of the enquiry report dated 10.8.2004 is annexed as Annexure P-2 and on the basis of the enquiry report, the Bank issued a show cause notice for personal hearing and vide order dated 17.9.2005 imposed the punishment of removal to Rameshwar Dass and Madhwa Nand from service w.e.f. 17.9.2005 and 11.10.2005.

One of the aforementioned respondents in CWP No. 1052 of 2011 impugned the action of removal by filing an appeal before the Deputy General Manager. After giving an opportunity of

personal hearing and after examination of submissions the appellate authority dismissed the appeal vide order dated 24.11.2005. Both the aforementioned officials/respondents sought reference before the Labour Court and the matter was referred to the Labour Court. He submitted that Labour Court exceeded the jurisdiction while exercising powers under Section 11-A of the Industrial Disputes Act (hereinafter called as 'the Act') by holding that the punishment of removal and dismissal was harsh and instead ordered the stoppage of four increments with cumulative effect.

In support of his contentions, learned counsel for the petitioner has relied upon the judgments in Divisional Controller N.E.K.R.T.C.Vs. H. Amaresh 2006 (4) RSJ 57, Bhupinder Singh Bains Vs. Punjab and Sind Bank and others 2011 (4) SCT 154, Jagdish Kumar Vs. State of Haryana and others 2011 (40) SCT 156, Er. Darshan Singh Bhullar Vs. Punjab State Electricity Board 2011 (4) SCT 157, Deshdeepak Vs. Financial Commissioner and Principal Secretary to Government of Haryana and others 2011 (4) SCT 352, Lachman Singh Chopra Vs. State Bank of India and others 2011 (40) SCT 353, Pritam Singh and others Vs. State of Haryana and others 2011 (4) SCT 356, Karam Chand Karlupia Vs. The State Bank of Patiala and others in LPA No. 155 of 2012 (O&M), G.M. (Operations) SBI and another Vs. R. Periyasamy 2015 (1) SCT 65, Virendra Krishna Mishra Vs. Union of India 2015 (1) SCT, 69, Union of India and others Vs. P. Gunasekran 2015 (1) SCT 5, Megh Varan Sharma Vs.

State of U. P. and others 2015 (1) SCT 12 and Ram Preeti Yadav

Vs. U. P. Board of High School and Intermediate Education and

others 2004 (1) RSJ 636 to contend that loss of confidence as the

primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which should weigh in the mind of the Court. He further contended that when an employee is found guilty of pilferage or of misappropriation of Bank's funds, there is nothing wrong in the bank losing confidence or faith in such an employee and awarding punishment of dismissal or removal cannot be interfered with.

He further submits that since the workman has not been able to point out a procedural irregularity or defect in the enquiry before the Labour Court, the Labour Court could not have embarked the path of exercising powers under Section 11-A. According to him, scope of interference under Article 226 is limited as per the ratio decidendi culled out in **Union of India Vs. G. Gunasekaran 2015 (1) SCT 5** inasmuch as that until and unless it shocks conscience of the Court, the Court cannot go into the proportionality of punishment much less reliability of the evidence, thus, prays that award of the Labour Court is not sustainable and therefore is liable to be set aside.

Mr. Pankaj Maini, learned counsel appearing on behalf of respondent No.2 submits that the Bank had issued a charge sheet to various employees including respondents pertaining to the same set of charges. He further submits that the Bank had adopted a different yard stick for imposing punishment upon different

employees as some of the employees namely Nirmal Kumar, Messenger, Kuldeep Singh, Messenger, S. S. Negi, Messenger have been let off by imposition of penalty i.e. bringing down by one step in the scale of pay for one year and in certain cases by two steps.

In support of the aforementioned contentions he relied upon the orders dated 29.8.2005 and 14.8.2006 (Annexure R-3) collectively. The aforementioned facts led the Labour Court to invoke the jurisdiction under Section 11-A of the Act by reducing the punishment of removal and dismissal, by, ordering stoppage of four increments with cumulative effect. However, he submitted that the award of the Labour Court is fair, legal and justified and there is no illegality and perversity in the same.

He further referred to the judgment cited by Mr. Kapil Kakkar, learned counsel for the petitioner in **Union of India's case (supra)** and submitted that rather the ratio decidendi culled out in the aforementioned judgment, applies to the facts and circumstances of the case and therefore, this Court should not interfere with the award rendered by the Labour Court.

In support of his contention he has relied upon judgment of this Court in **CWP No. 18176 of 1991 Punjab State Coop Supply and Marketing Federation Ltd.Vs. Ashok Kumar Mehta (Workman) and others 2011 Law Suit (P&H) 3276** that in an identical situation, the Labour Court has also embarked upon enquiry under Section 11-A and modified the order of dismissal and as such the order was upheld, as it was also a case of misappropriation.

I have heard learned counsel for the parties and perused the paper books.

The petitioner-Bank in response to the specific averment culled out in the written statement viz-a-viz a different yard stick adopted qua the other employees for the same very alleged misconduct, has filed replication wherein, it has been stated that different enquiry officers were appointed in all the cases and all the officers made different quantum of punishment, in essence one may take liberal view, while the other may impose stringent punishment. But the fact remains that the Bank did not deny the fact that similarly situated persons i.e. Messengers were retained into service by imposing a punishment by bringing down by two steps in the scale of pay with cumulative effect.

Since the Bank had also made a complaint to the police and the matter was referred to CBI and CBI in its investigation (Annexure R-2) did not establish allegations against the respondents i.e. Rameshwar Dass and Madhwa Nand, Messengers, SBI, Treasury Branch Sector 17, Chandigarh.

The relevant portion of the report of CBI reads thus:-

“Investigation did not establish allegations against the other accused namely S/Shri. Tara Singh, the then Dy. Manager, SBI, Treasury Branch, Sector 17, Chandigarh, Sh. Gulab Singh the then Assistant, SBI, Treasury Branch, Sector 17, Chandigarh, Sh. Madhvanand, Messenger, SBI Treasury Branch, Sector 17, Chandigarh and Sh. Rameshwar Dass, Messenger, SBI, Treasury Branch, Sector 17,

Chandigarh. However, Departmental action has been initiated against them by the competent authority for their negligence in discharge of their duties.

The aforesaid acts on the part of Sh. Ajit Singh, the then Branch Manager, SBI, Treasury Branch, Sector 17, Chandigarh and Sh. J. P. Ranga, the then Dy. Manager, SBI Treasury Branch, Sector 17, Chandigarh constitute offences punishable u/s 120-B, 409, 420 IPC and Sections 13(2) r/w 13(1) (c) and 13(1) (d) of prevention of corruption act, 1988.

The sanction for prosecution in original against accused Ajit Singh and J. P. Ranga are enclosed herewith.

It is, therefore, prayed that the accused Ajit Singh and J. P. Ranga may kindly be summoned and tried according to law.”

The Labour Court was justified in holding that the punishment awarded to the workmen was harsh and found it was a case of negligence of both the workmen in permitting the senior officers of the Bank for using their saving bank accounts for committing the alleged fraud for their monetary benefits and while noticing the fact that other similarly situated employees have been imposed lesser punishment, invoked jurisdiction under Section 11-A by holding that none of the workmen had connived with the officials of the Bank in committing fraud. There was no evidence before the enquiry officer, much less before the Tribunal to prove connivance, therefore, it was an instance of glaring injustice to each workman.

I do not intend to differ with the aforementioned view, for the reasons that the Bank has not given any reasonable explanation for imposing lesser punishment to other similarly situated officials. According to me, it is not a case of loss of confidence and faith while the Bank had retained other similarly situated persons into job thus, the authorities cited by Mr. Kapil Kakkar, learned counsel appearing on behalf of the petitioner does not apply to the facts and circumstances of the present case, as all pertain to loosing confidence in employees.

In view of what has been observed above, the order of the Labour Court is upheld and both the writ petitions are accordingly dismissed.

(AMIT RAWAL)
JUDGE

July 6th , 2015
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