

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CIVIL WRIT PETITION NO.16350 of 2009

RESERVED ON: DECEMBER 10, 2014

DATE OF DECISION: MARCH 02, 2015

Punjab National Bank through its Senior Manager  
HRD Department, Circle Office, Ludhiana .....Petitioner

Versus

Presiding Officer, Central Government Industrial  
Tribunal-cum-Labour Court, Chandigarh and another  
.....Respondents

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA**

**Present:** Mr.Santosh Kumar Sharma, Advocate  
for the petitioner.

Mr.Madan Mohan Mittal, Advocate  
for respondent No.2-workman.

<><><>

***TEJINDER SINGH DHINDSA, J.***

Punjab National Bank has instituted the instant writ petition directed against the award dated 23.1.2009, Annexure P3, passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Chandigarh whereby, while answering the reference, the punishment of dismissal from service imposed upon workman-respondent No.2 has been substituted with a punishment of stoppage of two increments with cumulative effect and as such, the workman has been held entitled to

reinstatement with continuity of service and full backwages.

2. Brief facts may be noticed.

3. Respondent No.2-workman was, initially, employed by the petitioner-Bank as Gunman/Guard in the year 1976. He was subsequently promoted as Cashier-cum-Godown Keeper. Workman was placed under suspension on 7.2.1990 and thereafter was served with a charge sheet dated 16.3.1990 on the allegation that while working as Assistant Cashier at Branch Office, Khanna on 3.2.1990, he received a sum of ₹2,000/- from one Shri Ram Dayal for deposit in saving fund Account No.20851, yet the workman made entry of ₹200/- only in the Bank accounts and as such, allegedly mis-appropriated the remaining sum of ₹1,800/-. The reply submitted by the workman to the charge sheet having been found unsatisfactory, regular departmental proceedings were initiated. Findings having been recorded by the Enquiry Officer against the workman, show cause notice dated 1.7.1991 was served contemplating the imposition of major penalty of dismissal from service. The Competent Authority after affording to the workman an opportunity of personal hearing passed order dated 23.11.1991 directing dismissal from service. Workman-respondent No.2 having raised an industrial dispute, the impugned award dated 23.1.2009 has been passed whereby in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947 (for short 'the Act'), the punishment of dismissal has been substituted with that of stoppage of two increments with cumulative effect and the workman has been held entitled to reinstatement with continuity of service and full

backwages.

4. Having heard learned counsel for the parties at length and upon perusing the pleadings on record, this Court is of the considered view that the impugned award cannot sustain.

5. The reference made to the Labour Court was in the following terms:

*“Whether the action of the management of Punjab National Bank, Ludhiana in dismissing Shri Gurwant Singh, Ex-Asstt. Cashier from service w.e.f. 25.11.1991 from the Punjab National Bank, Branch Khanna on the allegation of misappropriation of ₹1,800/- is illegal and unjustified? If so, what relief the concerned workman is entitled to and from which date?”*

6. Perusal of the impugned award would reveal that the Labour Court has recorded a finding that the Enquiry Officer appointed by the Bank to go into the charge of alleged misappropriation of ₹1,800/- by the workman while serving as Assistant Cashier had adopted a reasonable and fair procedure for conducting the enquiry and had also afforded every possible opportunity of being heard to both the parties.

7. Clearly, in terms of the reference made, the Labour Court having held the enquiry conducted against the workman to be fair and proper pertaining to the allegation of misappropriation of ₹1,800/- and the findings of the Enquiry Officer having been returned against the employee, the issue falling for consideration was as to whether the action of the Management-Bank in imposing the extreme penalty of dismissal was valid and

justified. It is only upon the Labour Court forming a view that the punishment of dismissal against the proven allegation of misappropriation of funds to be unjustified, that it could proceed further and examine the aspect of grant of appropriate relief.

8. The instant case demonstrates that the Labour Court has adopted a novel approach, inasmuch as, while answering the reference and while exercising discretion under Section 11-A of the Act has vested in itself even the jurisdiction of converting the finding recorded by the Enquiry Officer against the workman from that of mis-appropriation of funds to that of a bonafide mistake.

9. The relevant observations made by the Labour Court in such regard are as follows:

*“Enquiry Officer was not justified by ordering that the misappropriation of amount is proved. These are the perverse findings which are liable to set aside and are substituted with the finding that it was a mistake on the part of the workman and he should have been punished only for such mistake and not for the misappropriation of the amount under the provisions of bipartite settlement for minor punishments.”*

10. Concededly, regular departmental proceedings were initiated against the respondent-workman of having received ₹2,000/- from a client for deposit in a saving bank account and only ₹200/- were entered and reflected in the relevant account books and the balance of ₹1,800/- was stated to have been pocketed. It is such article of charge which was subject matter of enquiry and findings were returned against the workman. The

Labour Court having recorded a finding and having held the enquiry to be fair and proper could not have ventured forth in a manner so as to scale down the gravity of mis-conduct by terming the same to be not misappropriation but only a bonafide mistake and thereby to make out a case for exercise of discretion under Section 11-A of the Act so as to substitute the penalty of dismissal with a lesser punishment.

11. Apart from holding that the Labour Court has gone beyond the terms of reference, even the finding recorded as regards it not being a case of mis-appropriation but only a mistake on the part of the workman is wholly whimsical. In relation to the allegation of having collected ₹2,000/- from a client and having reflected only ₹200/- in the Bank accounts, the Labour Court has observed:

*“There is mis-writing in long book only. In rest of the documents, all the entries are correct.”*

12. No reference has been made by the Labour Court to any documents that may have been adduced in evidence in support of such observation. Even during the course of hearing before this Court, a specific query was put to learned counsel appearing for respondent No.2-workman who has very fairly conceded that there was no such evidence on record.

13. The scope of exercise of power under Section 11-A of the Act was considered by the Hon'ble Supreme Court of India in **U.B.Gadhe and others v. G.M.Gujarat Ambuja Cement Pvt. Ltd., (2008)2 SCC (L&S) 672** and it was held as follows:

*“It is not necessary to go into in detail regarding the*

*power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.*

*In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on*

*those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.”*

14. In **Mahindra and Mahindra Limited v. N.B.Narawade**, (2005)3 SCC 134, the Supreme Court has held that the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment awarded by the employer for proven mis-conduct. Reference in this regard may also be made to the decision of the Apex Court in **UP State Road Transport Corporation v. Nanhe Lal Kushwaha**, 2009(4) SCT 152.

15. The Labour Court apart from having erred in substituting its own findings with that of the Enquiry Officer also fell into error while interfering with the quantum of punishment going purely on compassion and by observing that punishment of dismissal is the economic death of an employee which not only affects him but also his family and social life. Such approach was clearly impermissible in law.

16. The workman was working on the post of Assistant Cashier in the Bank. He was dealing with public funds. Even a solitary instance of defalcation of public money would result in loss of confidence and would justify the extreme penalty of dismissal from service.

17. For the reasons recorded above, the writ petition is

allowed. Impugned award dated 23.1.2009 at Annexure P3 is set aside.

18. Petition allowed.

MARCH 02, 2015  
SRM

( TEJINDER SINGH DHINDSA )  
JUDGE

*Note: Whether referred to the Reporter? (Yes/No)*