IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.5333 of 2012
Date of decision: 15.9.2015

Rajinder Singh

... Petitioner

Versus

Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Rupesh Kumar, Advocate, for the petitioner.

Mr.H.N.Mehtani, Advocate, for respondent No.2.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The petitioner was dismissed after inquiry in which three charges were proved against him. The charge was committing acts of misconduct in fraudulently withdrawing money from subscribers' savings Bank accounts maintained by the respondent-State Bank of Patiala where the petitioner worked in the capacity of a Cashier-cum-Godown Keeper. The charge sheet was based on two complaints made by account holders Gurnam Singh and Angrej Kaur in the years 1996 and 1997. The report was considered and the petitioner was awarded penalty of dismissal from service without notice in terms of para. 21 (iv) (a) of Bipartite Settlement dated 14th February, 1995 read with the provisions of Sastry/Desai Awards for withdrawing payments from the Bank accounts of the two complainants. He was placed under suspension on 7th January, 1997 and was dismissed on 31st July, 1998 when the disciplinary authority accepted the inquiry report.

2. Aggrieved by the order of dismissal, the petitioner filed a Civil Suit No.179 of 15th September, 1999 challenging the order passed on the basis of the inquiry report dated 13th May, 1998. The suit was contested by the Bank. Learned Civil Judge, Junior Division, Patiala vide judgment dated 2nd May, 2001 held that the dispute between the parties involves recognition, observance or enforcement of the rights or obligation created by the Industrial Disputes Act, 1947. As the workman had been dismissed from service on account of a charge of fraud levelled against him then as per the Bipartite Settlement which governs the condition of service of the plaintiff in the Bank, the dispute between the parties involved industrial rights. Since action was taken under the Bipartite Agreement the proper forum for the plaintiff was to approach the Labour Court and the Civil Court had no jurisdiction to entertain the suit. The suit was accordingly dismissed. The order of the Civil Judge was not appealed against.

3. Then the petitioner invoked his remedy before the Labour Court by serving a demand notice on the Bank on 6th December, 2001 as mentioned in para. 9 of the pleadings. The dispute was referred to the Central Government Industrial Tribunal, U.T., Chandigarh by the appropriate Government vide reference order dated 13th September, 2002 to adjudicate the issue whether the State Bank of Patiala was justified in dismissing the petitioner from service. The issue of fairness or unfairness in the conduct of the inquiry proceedings was decided as a preliminary issue vide order dated 4th August, 2009. The Tribunal held that the inquiry

conducted by the Bank was fair and proper and was perfectly in accordance with the procedure prescribed. The Labour Court rightly separated the two principles involved; One, of the inquiry being fair and proper and the other being as to the correctness or the perversity of the decision making process in awarding the extreme punishment of dismissal and on this basis the trial proceeded with the remaining trial. Both the parties were afforded adequate opportunity to adduce evidence on perversity or otherwise of the inquiry proceedings for the first time before the labour court and to contradict and support the findings arrived at in the departmental proceedings, to test proportionality of punishment inflicted. The evidence was recorded. An opportunity of cross-examination was afforded to the parties. The entire inquiry file was made part of the record.

4. The question before the Labour Court was as to extent of jurisdiction under Section 11A of the Industrial Disputes Act, 1947 which could appropriately be exercised to test whether the punishment awarded was proportionate to the misconduct committed. The charge against the workman was that he had received cash payment from saving Bank withdrawal forms from the Teller by identifying the signature of the drawer on the back of the form. The signatures of the account holder on the withdrawal form were later on found to be forged. There were several transactions made between 17th September, 1996 to 18th November, 1996 totalling an amount of ₹ 11,100/-. This was from the account of Gurnam Singh. From the account of Angrej Kaur, the petitioner was accused of having committed fraud of ₹ 18,200 with the Bank by five transactions between 19th October, 1996 to 23rd November, 1996. The petitioner was

accused of issuing draft No.191335 dated 6th May, 1996 for a sum of ₹ 10,000/- favouring M/s Hargur Finance Private Limited payable at Patiala by debiting ₹ 10,000/- and ₹ 20/- from the SB account No.6510 of Gurnam Singh and delivering the draft to the aforesaid company at Patiala for credit into the petitioner's account with them. Thus, the workman misappropriated a sum of ₹ 10,000/- by unauthorized debit from savings Bank account of Gurnam Singh and getting that amount ultimately credited into his own account. These acts were in serious misconduct in terms of clause 19.5 (J) of the Bipartite Settlement, 1996 read with the provisions of Sastry/Desai Awards and subsequent Bipartite Settlement. His reply to the charge sheet was not found satisfactory and regular inquiry was ordered. The petitioner produced eight witnesses to depose in his favour including Angrej Kaur and Gurnam Singh as his witnesses from whose accounts money had been withdrawn and allegedly misappropriated. The other six employees were the employees of the Bank and an independent hand writing expert.

5. Gurnam Singh deposed that he had not put his signatures on the voucher in question. The workman challenged the decision making process of the Inquiry Officer on the basis of the evidence of Angrej Kaur. She admitted making the complaint against fraudulent withdrawal from her Savings Bank account but later she resiled stating that the petitioner had deposited the amount and she no longer had any complaint against him. However, the Court drew an adverse inference from this fact and reasoned that she had been won over by the petitioner as Angrej Kaur gave contradictory statements to try and shield the petitioner and save him from punishment. The Tribunal read the cumulative effect of the evidence of Angrej Kaur and held that the inquiry officer was correct in holding that the

three charges were proven against the workman. The Labour Court held that it was not a case of interference in the decision making process adopted by the Inquiry Officer where three charges were found true. Therefore, the disciplinary authority was within his managerial rights to accept the findings in the inquiry and dismiss the petitioner from service.

6. On the question of quantum in the face of the charges having been established beyond doubt, the Labour Court has not found it fit to interfere with the punishment awarded which was proportionate to the gravity of the misconduct in a case involving a Bank where financial integrity is of utmost value and any act by employee which compromises the fair name of the Bank is not to be passed over. If the integrity of the employees of the Bank is compromised, the public is bound to lose faith in the Banking institution which would be fatal to its business. The disciplinary authority was correct in measuring the suitability of punishment as just and proper and interference was not warranted in exercise of power under Section 11A of the Act and any lesser punishment would fit the bill.

7. In this petition filed against the impugned award, the Bank has filed a written statement where they have objected, pointing out that neither has the dismissal order dated 30th July, 1998 nor the order passed in appeal preferred by the petitioner before the appellate authority in the Bank rejecting the appeal on 4th December, 1998 have been appended to the petition and it has fallen on the Bank to place those documents as respondent's annexures on which the case turns On this short ground, Mr.Mehtani submits that the petition deserves to be dismissed. I would not say that he is incorrect in pointing out this serious procedural defect in the petition.

8. Mr. Mehtani reminds that the preliminary issue framed by the Civil Judge, Junior Division, Patiala on the legality or illegality of the dismissal order and the order rejecting the appeal was decided on merits in favour of the Bank and proper findings has been recorded by the civil court in that respect but the civil court held that the proper forum was the Labour Court and not the Civil Court to conduct the trial. There was no occasion for the Bank to challenge the order passed by the civil court but it is argued by Mr.Mehtani that the civil court was within its jurisdiction if it had decided the case on merits and had not shied away. On this submission I may have agreed if the management was a private organization where Section 11A would rule the roost but against an authority under Article 226, as the Bank is, reinstatement would be available relief before the civil court if a suit was brought to challenge the dismissal. But it is too late to go into the question whether the civil court refused to exercise jurisdiction vested in it and to go into the legality of the dismissal order. Be that as it may, the petitioner was diverted to the remedy in labour law from where a decision has come on merits. The question is thus left open whether civil court had not the jurisdiction to decide as it is not necessary to be gone into in challenge to the impugned award.

9. The petitioner relies on the decision of the Supreme Court in **Roop Singh Negi** v. **Punjab National Bank and others;** (2009) 2 SCC 570 to contend that suspicion as is well known, however high it may be, can under no circumstances be held a substitute for legal proof. I do not see how this judgment helps the petitioner. In a case where preponderance of probabilities alone justifies the action taken on the evidence produced by the parties nothing further requires to be looked into when jurisdiction has

been exercised on sound principles then substitution of opinion is not the business of the Court in supervisory jurisdiction. I fail to see how this judgment helps the petitioner in a domestic inquiry setting where the principles of preponderance of probabilities and the complicity of the petitioner with customers of the bank when everything is properly weighed in a balance alone justifies the action taken on the evidence produced by the parties. The two complainants are suspect of being suborned by the delinquent to exculpate him from the charges levelled and proven. I believe, in the totality of facts and circumstances gathered from the evidence, that evidence was tampered with and the broad tilt of it is that the complainants were produced as defence witnesses and their statements bought. That explains in many ways why the Bank did not rely on them in their evidence as they may not have wanted to risk it only to demolish their case against the petitioner. The Bank after all does business by reducing all possible risks.

10. Lastly the Bank contends that this Court in any event would not tinker with the award and consider granting relief by quashing the dismissal order and reducing the penalty in extension of the power of the labour court in Section 11-A. In any event reinstatement is out of the question as the Bank has lost confidence in the petitioner and can no longer repose trust and faith in him.

11. I have heard the learned counsel for the respective parties at length and I am not persuaded to interfere in the award for any of the grounds raised in the petition and pressed or to fault the reasons assigned by the court a quo to decline the reference. This is not a case for judicial review of the award. The petition lacks in substance and for the reasons recorded in

the award and in this order, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

September 15 , 2015
Paritosh Kumar