

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 09.03.2015

+ **W.P.(C) 4974/2008 & CM No.9536/2008**

RESERVE BANK OF INDIA & ANR

.....Petitioners

versus

THE PRESIDING OFFICER & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Sushil Dutt, Sr. Advocate with Mr K.S. Parihar and Mr H.S. Parihar.

For the Respondents : Mr Pawan Bahl for R-2.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 19.02.2008 (hereafter the 'impugned order') passed by the Central Government, Industrial Tribunal cum Labour Court-II (hereafter the 'Tribunal'). By the impugned order, the Tribunal decided the issue with regard to fairness of domestic inquiry held by the petitioner in respect of charges framed against respondent no.2, as a preliminary issue; the Tribunal held that the inquiry was vitiated as the Inquiry Officer had relied on evidence of the complainant who had not been examined by respondent no. 2 (hereafter the 'workman'). The petitioner challenges the impugned order as being perverse and contrary to the principles of law. This is controverted on behalf of the workman. The workman further contends that the present petition is not maintainable as it seeks to challenge an order with respect to a preliminary issue, while the

disputes are still pending consideration before the Tribunal.

2. The principal controversy to be addressed is whether the impugned order is perverse and whether any interference by this Court is warranted at this stage.

3. Briefly stated, the facts relevant for considering the above controversy are as under:-

3.1 A female employee of the petitioner (hereafter 'the complainant') had made a complaint to the Regional Director of the petitioner alleging that the workman had misbehaved with her and she had been sexually harassed. She had sought protection from the petitioner against the alleged harassment.

3.2 Pursuant to the complaint, a show cause notice dated 30.06.2003 was issued by the competent authority of the petitioner to the workman, calling upon him to show cause why disciplinary action should not be initiated against him. The complainant made yet another complaint on 11.07.2003 alleging that she was being harassed and threatened to pressurize her to withdraw her complaint.

3.3 The said complaints were referred to the Regional Complaints Committee constituted by the petitioner for prevention of sexual harassment of women at workplace. On 18.07.2003, the said committee concluded that, *prima facie*, a case of sexual harassment was made out. Thereafter, a charge-sheet was issued to the workman alleging that he had violated Regulation 41C of the Reserve Bank of India (Staff) Regulations, 1948 (hereafter the 'said Regulations') "*by showing physical contact and*

advances towards a woman employee at workplace and thereby committing an act of misconduct”. It was alleged that this constituted violation of Regulation 47 of the said Regulations.

3.4 The Inquiry Officer commenced the proceedings on 28.08.2003. The complainant and other witnesses were examined. Some of the witnesses were also cross examined by the workman. The Inquiry Officer concluded the proceedings and submitted a report stating his conclusion that the charges framed against the workman stood proved.

3.5 On 10.12.2003, the Inquiry Officer’s report was forwarded to the workman who submitted his representation against the report. After considering the Inquiry Officer’s report as well as the representation submitted by the petitioner, the competent authority held the workman to be guilty of misconduct and a penalty of dismissal was proposed under Regulation 47(1)(e) of the said Regulations. A show cause notice was also issued to the workman permitting him to make further representation against the proposed penalty. The workman submitted his representation in response to this opportunity.

3.6 On 20.02.2004, the competent authority passed a final order dismissing the workman from services of the petitioner. This order of dismissal was carried in appeal before the Regional Director of the petitioner (the Appellate Authority), which was also dismissed on 02.06.2004.

3.7 The workman challenged the dismissal order by way of a writ petition (being W.P.(C) 17858/2005). By an order dated 25.04.2006, the

said writ petition was dismissed as withdrawn; however, the petitioner was granted the liberty to approach the authority under the Industrial Disputes Act, 1947 and the appropriate Government was further directed to refer the disputes for adjudication by the appropriate forum within a period of six weeks.

3.8 The disputes raised by the workman against his dismissal were referred to the Tribunal; the terms of reference read as under:-

“Whether the action of the management of Reserve Bank of India in imposing the penalty of dismissal from service on Shri Madan Lal w.e.f. 20.2.2004 is legal and justified? if not, what relief the workman is entitled to”.

3.9 The workman filed a statement of claims whereby he alleged that the Inquiry Officer was prejudiced and biased. He further alleged that the workman was not granted enough time for preparation to cross examine the witnesses and his persistent requests for an opportunity to cross examine the complainant, were rejected by the Inquiry Officer. He, therefore, pleaded that he had been denied the opportunity to defend himself. The Tribunal heard the parties on the preliminary issue regarding fairness of the inquiry and passed the impugned order.

3.10 This Court, by an order dated 15.07.2008, passed an *ad interim* order staying the operation of the impugned order which was extended from time to time. By an order dated 14.03.2011, this Court issued Rule and also directed the interim order to continue.

4. A perusal of the impugned order indicates that the Tribunal faulted the Inquiry Officer for not giving an opportunity to the workman to cross

examine the complainant. It was further held that the evidence of witnesses, who had not been cross examined by the workman, were inadmissible and on this basis the Tribunal concluded that the Inquiry stood vitiated. The petitioner disputes the aforesaid decision as being perverse and contrary to the records.

5. The inquiry proceedings have been placed on record. The same indicate that the proceedings commenced on 01.08.2003 and on that date, the complainant was examined. She also tendered copies of the complaints filed against the workman. The authorized representative of the workman was, thereafter, called upon to cross examine the complainant. At this stage, the authorized representative of the workman objected to the Inquiry Officer receiving photocopies of the complaint and demanded that the original of the same be produced. In addition, the authorized representative also demanded that the other persons be called upon to confirm the statement made by the complainant. He stated that *“Sir I will examine Smt. Santosh Kumari, if you give ruling by keeping in mind my above contention, mentioning how enquiry can proceed without original documents and what is its significance.”*

6. The objections raised on behalf of the workman were rejected by the Inquiry Officer but the inquiry was postponed to 10.09.2003. On 10.09.2003, the workman's representative withdrew himself from the proceedings. In the circumstances, the proceedings were adjourned to enable the workman to engage another representative from the staff or association/union. Thereafter, the inquiry proceedings resumed on 18.09.2003 and on that date, the workman stated that he had not found any

person to represent himself and requested that he be permitted to defend himself in person. Further, the workman requested that he be permitted to cross examine each witness after the bank had presented all its witnesses. The request of the workman to represent himself was granted. However, his request to commence cross examination after the bank had examined all its witnesses was rejected. The Inquiry Officer clarified that the workman *“may cross-examine the witnesses immediately after the Bank presents them”*.

7. Further proceedings were deferred till 26.09.2003. On 26.09.2003, the Presenting Officer requested the Inquiry Officer to permit further examination of the complainant as she pleaded that an important issue had been left out. This request of the Presenting Officer was accepted and two additional questions were put to the complainant, which were answered. Thereafter, the workman was called upon to cross examine the complainant as had been clarified by the Inquiry Officer on the previous occasion. The workman did not cross examine the complainant but once again reiterated his request to be permitted to do so at the end of the proceedings. This request declined by the Inquiry Officer, yet again; it was once again clarified that he should cross examine the witnesses immediately after they are presented. The workman was also asked as to the reason why he wished to cross examine the complainant in the end. In response, the workman had stated: *“Sir, I want to cross-examine the Bank witness No.1 in the end as what the serious charges have been framed against me and has been hatched a conspiracy and entrapped me in that, I will go to the depth of this conspiracy and highlight the reality.”* The Inquiry Officer did not accept the said reason but, nonetheless, adjourned the proceedings for two days to

give the workman an opportunity to cross examine the complainant.

8. On 29.09.2003, the workman was once again called upon to cross examine the complainant but the workman refused to do so and once again reiterated his demand to examine the complainant at the end of the proceedings.

9. It is clear from the above that several opportunities had been granted to the workman to cross examine the complainant. The complainant had been called repeatedly to cross examine the complainant. His request to be permitted to cross examine the complainant after other witnesses had deposed, was repeatedly declined. However, the workman stubbornly refused to accept the ruling of the Inquiry Officer and failed to avail of the opportunity granted to him. It is also apparent that the workman did not provide any good reason for being permitted to cross examine the complainant at the end. The only reason indicated by him was that he would go into the depth of the conspiracy hatched against him and expose the reality. Obviously, this could not have been accepted as a justifiable reason for allowing the workman to cross examine the complainant after all other witnesses had been examined.

10. The conclusion of the Tribunal must be examined in the aforesaid context; the Tribunal had concluded that:

“the complaint has not been cross-examined by the workman. The Inquiry Officer has given his findings on the examination – in – chief of the complainant and the evidence of the other witnesses. The domestic inquiry is not an empty formality. The Inquiry Officer should have given the opportunity to the workman for cross-examining the complainant. It is true that technicalities of the

Evidence Act are not applicable in domestic inquiry but the examination – in – chief of the witnesses who have not been cross-examined by the workman is not admissible in evidence. The inquiry stands vitiated.”

11. In my view, the said findings are, *ex facie*, perverse and wholly contrary to the record. Clearly, the impugned order is without application of mind. Undisputedly, the Inquiry Officer had repeatedly called upon the workman to cross examine the complainant. First such opportunity was granted to the workman on 28.08.2003. Further opportunity was granted to the workman on 26.09.2003. The workman was called upon to cross examine the complainant yet again on 29.09.2003. It has been contended that the first opportunity granted on 28.08.2003 should not be considered as an opportunity at all, since the complainant was further examined on 26.09.2003. Even if this contention is accepted, it cannot be disputed that the workman had been granted at least two opportunities to cross examine the complainant; once on 26.09.2003 and next on 26.09.2003. In this factual background, the Tribunal’s observation that “*the Inquiry Officer should have given the opportunity to the workman for cross examining the complainant*” indicates that the impugned order has been passed without reference to the factual position.

12. Mr Pawan Bahl, the learned counsel for the workman contended that failure of the Inquiry officer to accede to the request of the workman to defer cross examination of the complainant, was in violation of the principles of natural justice. However he was unable to substantiate the said contention. He focused his arguments, mainly, to assail the maintainability of the petition. He relied upon the decision of a Single Judge of the Gujarat

High Court in **Gujarat State Fertilizers and Chemicals and Anr v. Industrial Tribunal:** (2011) I LLJ 225 Guj as well as a Coordinate Bench of this High Court in **M/s Glaxo Smithkline Consumer Healthcare Limited v. Presiding Officer Labour Court-IX and Anr.:** 2010 (4) LLJ 739 in support of his contention that a writ petition by an employer against the preliminary finding of the Tribunal was not maintainable.

13. It is seen that the decision of the Gujarat High Court followed the decision of the Supreme Court in **Cooper Engineering Limited v. Shri P. P. Mundhe:** AIR 1975 SC 1900. In that case, the Supreme Court had expressed its concern over the delay which is caused by an employer rushing to Court on an adverse preliminary finding by the Labour Court. The Supreme Court had further expressed that there would be no justification for any party to question the decision with regard to the preliminary issue in the matter. The relevant extract of the said decision are as under:-

“22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the

preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

(emphasis supplied)

14. A similar view was also expressed by the Supreme Court in **D.P. Maheshwari v. Delhi Administration**: (1983) 4 SCC 293. In that case, the Supreme Court held that:

“We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion.”

15. In ***M/s Glaxo Smithkline*** (*supra*) this Court had noted the aforesaid decision of the Supreme Court and had declined to entertain the employer’s petition solely for the reason that it laid a challenge to the preliminary finding of the Industrial Adjudicator.

16. It cannot be disputed that the practice of employers rushing to Court to challenge a preliminary finding of the Industrial Adjudicator must be

discouraged as it results in further delay in conclusion of proceedings. If an employee is dismissed from service, he has right to challenge the same before the Industrial Adjudicator. In the event that the employee has been dismissed without holding a departmental inquiry, the employer can justify its action by leading evidence and proving the allegations made against the employee. In cases where a punitive action has been taken against an employee after holding a domestic inquiry, the initial onus lies on the employee to show that the departmental inquiry was illegal or vitiated on account of any procedural impropriety. If it is found that the inquiry proceeding was vitiated on account of an unfair procedure or on the ground that it violates the principles of natural justice, the employer would once again have an opportunity to lead evidence to justify its action and substantiate the allegations leveled against the workman.

17. Plainly, if petitions impugning a preliminary finding holding that a domestic inquiry is vitiated are entertained and the proceedings before the Tribunal are stayed, the same would grossly delay the proceedings before the Industrial Adjudicator. In the present case, this Court had passed an ad-interim order staying the proceedings before the Tribunal on 15.07.2008 and had issued Rule on 14.03.2011. In the given circumstances, the workman was also not entitled to the benefit of Section 17B of the Industrial Disputes Act, 1947 as the Tribunal had not passed an order directing reinstatement of workman in service. This was noted by this court in the order dated 18.07.2014 and in view of the aforesaid, the petition was heard out of its turn. In hindsight, admitting the petition and staying the proceedings before the Tribunal may not have been the appropriate course; this is precisely the situation, which - as per the decisions of the Supreme

Court in ***Cooper Engineering Limited*** (*supra*) and ***D.P. Maheshwari*** (*supra*) - ought to be avoided.

18. I was inclined to dismiss the petition as it was limited to challenge the finding of the Tribunal returned in respect of the preliminary issue; however, keeping in view the fact that the petition has remained pending in this Court for several years, I do not consider it appropriate to dismiss the same on the threshold. Further, having considered the merits of the petition and having found that the decision of the Tribunal to be unsustainable, I find myself unable to dismiss the petition only on the ground that the same had been preferred on a finding of a preliminary issue.

19. It has been contended that the present petition is not maintainable and in view of the judgment of the Supreme Court in ***Cooper Engineering Limited*** (*supra*) and ***D.P. Maheshwari*** (*supra*), this Court cannot entertain the same. I am unable to agree with this contention. The aforesaid decisions as well as the decision of a Coordinate Bench of this Court in ***M/s Glaxo Smithkline*** (*supra*) cannot be read as authorities for the proposition that this Court does not have jurisdiction to entertain the present petition or any petition that may have been preferred against the Tribunal's conclusion on a preliminary issue. Undoubtedly, such petitions must be discouraged for the reasons as indicated in the aforesaid decisions. And, the Courts must be reluctant to exercise the jurisdiction under Article 226 of the Constitution of India to entertain the petition filed by employers against the decisions on preliminary issues rendered by the Industrial Adjudicator. But, the aforesaid decisions should not be misunderstood to mean that this Court does not have the jurisdiction to entertain such petitions. The principles

enunciated by the Supreme Court are principles to be borne in mind by the High Courts, while considering whether to exercise their jurisdiction or refrain from doing so. Clearly, High Courts would not be faulted in declining to exercise their jurisdiction where an employer challenges the Industrial Adjudicator's decision on the preliminary issue; however, the same does not mean that the Courts cannot entertain such petitions, even in cases where the findings returned by the Tribunal are, *ex facie*, perverse.

20. It is trite law that orders of authorities which are perverse are amenable to judicial review under Article 226 of the Constitution of India. Thus, although one may not have been inclined to entertain the present petition but given the fact that the petition was admitted and has remained pending for several years, I do not consider it appropriate to refrain from considering the merits of the petition, particularly where it is, *ex facie*, apparent that the impugned order is without application of mind.

21. Accordingly, the impugned order is set aside. The interim order staying the proceedings before the Industrial Tribunal is vacated. It is clarified that it will be open for the workman to challenge the inquiry proceedings on other grounds. It is requested that the Tribunal may dispose of the reference as expeditiously as possible. The pending application stands disposed of. No order as to costs.

VIBHU BAKHRU, J

MARCH 09, 2015
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