

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

Reserved on: 09th April, 2015
% **Date of Decision: 27th April, 2015**

+ W.P.(C) 5168/2013

RAJENDRA SINGH Petitioner

Through: Mr. R.S. Garia, Advocate

versus

STATE BANK OF INDIA Respondent

Through: Ms. Kittu Bajaj, Advocate

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. By way of this petition filed under Article 226 of the Constitution of India the petitioner seeks to set aside the award dated 23.04.2013, passed in ID No. 52/2011 by the learned Presiding Officer, Central Govt. Industrial Tribunal, Karkardooma Courts Complex, Delhi (hereinafter referred to as the 'Tribunal') whereby the Tribunal dismissed the claim statement of the petitioner, being premature.

2. Brief facts of the case as borne out from the petition are that the petitioner was suspended on 08.12.2006 on account of alleged misappropriation of funds from customers account and memo of charges were issued on 12.11.2007 and 04.06.2008 for unauthorized debiting of customers account and using the money. A decision to hold enquiry against the petitioner was taken by the respondent bank on 01.09.2008. Thereafter, findings were given by the enquiry officer on the charges against the

petitioner. On 24.08.2010, penalty of removal from service with superannuation benefits was imposed upon the petitioner and the period of suspension was directed to be treated as period not spent on duty. On 23.09.2010, the petitioner filed an appeal before the Appellate Authority who vide its order dated 16.11.2010 upheld the order of the Disciplinary Authority. Thereafter, on 27.07.2011 the petitioner filed his claim raising Industrial Dispute no. 52/2011 before the learned Industrial Tribunal, in terms of Section 10 (4A) {inserted in the Industrial Disputes Act (for short "ID Act") vide Delhi Act 9 of 2003, section 2 w.e.f from 22.08.2003}. Vide order dated 23.04.2013, learned Presiding Officer held that since the claimant/petitioner did not comply with the provisions of sub-section (2) of Section 2A {inserted in the ID Act by Act 24 of 2010, sec.3 (w.e.f. 15-9-2010)}, the tribunal cannot invoke its jurisdiction to adjudicate the dispute.

3. Aggrieved by the said order the petitioner has preferred the present petition.

4. Learned counsel for the petitioner contended that the learned Tribunal failed to see that the requirement to approach the Conciliation machinery as provided under sub section 2 of Section 2A, was not mandatory as Section 10 (4A), notwithstanding provisions of Section 2A provides that the workman could raise industrial dispute and approach the Industrial tribunal without going through the procedure for conciliation. The Presiding Officer of the Industrial Tribunal at least ought to have considered that the previous Presiding Officer had entertained the claim of the workman and even the management had not raised any objection to the maintainability of the industrial dispute, the same being in accordance with provisions of Section 10(4A) of the ID Act. The object of Section 10(4A) of the ID Act is to

provide the workers aggrieved by dismissal, discharge or retrenchment, an opportunity to immediately approach the Industrial Tribunal to save them from the mandatory process of joining the conciliation mechanism. Both amendments in section 10 (4A) and sub-section 2 of section 2A of the ID Act are not in conflict with each other and a harmonious construction of the said provisions is possible.

5. It was lastly contended by the counsel for the petitioner that dismissal of the workman's claim defeats the very objective of Section 10 (4A) of the ID Act in as much as it defers the adjudication of claim of the workman on merits and prolongs the process of grievance redressal of the workman.

6. Counsel for the petitioner has placed reliance upon a judgment of this court in '**The Management of LRS Institute v. Devender Kumar**' 197(2013) DLT 12 (CN) and '**Municipal Corporation of Delhi v. Mahavir**' 2002(95) FLR 974.

7. *Per Contra*, learned counsel for respondent contended that the amended Section 2A of the ID Act makes it mandatory for the workman to first of all move an application before the conciliation officer of the appropriate government for conducting of conciliation proceedings and the workman could approach the Labour Court or Tribunal only after expiry of 45 days from the date of his above referred application. Article 254 of the Constitution of India clearly states that in case of a contradiction between the State Law and the Central Law, the Central Law will prevail over the State Law to the extent of repugnancy and as such, Section 2A as amended by the Central Act, will prevail over Section 10(4A) as amended by the State Act. Amendment to Section 2A being later in time, shall prevail upon the amendment made in Section 10 of the ID Act.

8. Counsel for the respondent has placed reliance upon '**Goa Sampling Employees' Association v. General Superintendence Co. of India Pvt. Ltd. and Others**', (1985) 1 SCC 206 and '**Municipal Corporation of Delhi v. Mahavir**' (supra). Reliance has also been placed upon the judgment of this court in '**Mohd. Arif v. Cardio Products Corporation and Anr**', in W.P. (C) 220/2013 decided on 20.03.2015.

9. I have heard the learned counsel for the parties and have also perused the material on record.

10. The dispute in this case revolves around the issue i.e. whether there is any repugnancy between the amendment made to the ID Act under Section 2A pursuant to Central Amendment Act 24 of 2010, dated 18.8.2010 and the Delhi Amendment Act 9 of 2003 introducing Sub-Section 4A in Section 10 and if it is so, whether the provision of Section 10 (4A) stood eclipsed by Section 2A of the ID Act in the light of the Article 254(1) of the Constitution of India?

11. At this stage, it would be appropriate to reproduce and discuss the amended Section 10(4A) and Section 2A of the ID Act. The said amendments read as under:

“Section 10 (4A) added vide Delhi Act 9 of 2003 (w.e.f. 22.08.2003)

“10(4A): Notwithstanding anything contained in Section 9C and this section, in the case of a dispute falling within the scope of Section 2A, the individual workman

concerned may, within twelve months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Delhi Amendment) Act, 2003,

whichever, is later, apply in the prescribed manner, to the Labour Court or the Tribunal, as the case may be, for adjudication of the dispute and the Labour Court or Tribunal, as the case may be, shall dispose of such application in the same manner as a dispute referred under sub-section (1).”

Section 2A amended vide Act 24 of 2010 (Central) (w.e.f. 15.09.2010)

“Section 2A of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:-

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government. (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

12. The aforementioned provisions infer that Section 10(4A) of the ID Act gives the workman discretion to file his claim directly in the concerned Labour Court, within a period of twelve months from the date of communication of his discharge, dismissal, retrenchment or termination to him, whereas, Section 2A ID Act requires a workman to move an application before the concerned Conciliation Officer of an appropriate

government and only after the expiry of 45 days from the date of filing of this application before the Conciliation Officer, the workman can move his claim before the concerned Labour Court. These two provisions undoubtedly are repugnant to one another and provide for a different mechanism to the workman for redressal of his grievance under the ID Act.

13. It is a settled law that in case of a conflict between the two provisions of an Act, one enacted by the State and other by the Centre, the Court is duty bound to see whether the provisions thereof can be read harmoniously and only in cases where the same is not possible the question of prevalence of one over another would arise and in that context Article 254 of the Constitution is referred. It appears that a harmonious construction of the aforementioned provisions is not possible. Therefore in order to resolve the repugnancy of the said two provisions it becomes important to refer to the provisions of Article 254 of Constitution of India which reads as follows:

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State [***] with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State

shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

14. In case an issue of repugnancy arises between two provisions, what needs to be ascertained is whether the provision of the State enactment though otherwise constitutionally valid, has lost its validity because the Parliament has made an amendment with a conflicting provision on allegedly the same matter. In order to decide this question it must be shown that the two provisions are inconsistent and they cannot stand together or operate in the same field.

15. The Apex Court in ‘**Karunanidhi v. Union of India**’ 1979 AIR 898 has laid down the following conditions which need to be fulfilled before any repugnancy can be determined between a Central and State Act and observed as under:

“24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.”

16. If a repugnancy arises on the basis of the aforementioned conditions being satisfied, it is settled that the provisions of the Central Act shall prevail over the State Act. The Apex Court in ‘**Govt. of A.P. And Another v. J.B. Educational Society And Another**’, (2005) 3 SCC 212 in this context held:

“10. There is no doubt that both Parliament and the State legislature are supreme in their respective assigned fields. It is the duty of the Court to interpret the legislations made by the Parliament and the State legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non-obstante clause in Clause (1) of Article 246, the Parliamentary legislation would prevail notwithstanding the exclusive power of the State legislature to make a law with respect to a matter enumerated in the State List.

11. With respect to matters enumerated in the List III (Concurrent List), both the Parliament and the State legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

12. Thus, the question of repugnancy between the Parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in Concurrent List and there is a conflict. In both the situations, Parliamentary legislation will predominate, in the first, by virtue of the non-obstante clause in Article 246(1), in the

second, by reason of Article 245(1). Clause (2) of Article 245 deals with a situation where the State legislation having been reserved and having obtained President's assent prevails in that State; this again is subject to the proviso that the Parliament can again bring a legislation to override even such State legislation.”

17. The repugnancy between Section 2A and 10(4A) of the ID Act satisfies the said three conditions laid down in ‘**Karunanidhi v. Union of India**’ (supra) and therefore applying the principles enumerated under Article 254 of the Constitution in the light of ‘**Govt. of A.P. v. J.B. Educational Society**’ (supra), it is beyond any reasonable uncertainty that Section 2A of the ID Act (introduced by Central Amendment Act 24 of 2010) shall prevail over Section 10(4A) of the ID Act (introduced by State Amendment Act).

18. Further, Section 2A of the ID Act begins as, “(2) Notwithstanding anything contained in Section 10.....” which implies that this Section has an overriding effect not only over the provisions of Section 10 of the ID Act but also its State amendments. I am of the view that the Central Amendment Act, 2010 was passed while keeping in perspective the amendments made to Section 10 and with the use of the aforementioned words it seeks to achieve an overriding effect over the amendments made to Section 10 of the ID Act.

19. The expression “Notwithstanding” was interpreted by the Apex Court in ‘**Chandavarkar Sita Ratna Rao v. Ashalata S. Guram**’ (1986) 4 SCC 447 wherein it was of the view that:

“67. A clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract” is more often than not

appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum* [AIR 1964 SC 207, 215 : (1964) 4 SCR 280]

68. It is well settled that the expression “notwithstanding” is in contradistinction to the phrase “subject to”, the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject....”

20. Therefore, it is beyond any reasonable doubt that the Central Amendment Act inserting Section 2A has an overriding effect over Section 10(4A) not only because the former is a Central Amendment that has been given effect to from the year 15.09.2010 (i.e. 7 years from the date of Delhi State Amendment of 22.08.2003) but also because of usage of the words ‘Notwithstanding anything contained in Section 10’ in the said Section.

21. Thus, I find no illegality or infirmity in the impugned award dated 23.04.2013, passed in ID No.52 of 2011 by the learned Presiding Officer, Central Govt. Industrial Tribunal, Karkardooma Courts Complex, Delhi.

22. In the result, the petition deserves to be dismissed and the same is hereby dismissed.

(VED PRAKASH VAISH)
JUDGE

APRIL 27th, 2015/hs