

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.02.2015

+ **W.P.(C) 7414/2010 & CM No. 4431-4432/2013**

RAJENDER SINGH

..... Petitioner

versus

STATE BANK OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Harvinder Oberoi and Mr Jawahar Singh.

For the Respondent : Mr Pramod Kumar.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

CM No. 4431-4432/2013

For the reasons stated in the applications, the same are allowed.

W.P.(C) 7414/2010

1. The petitioner has filed the present petition impugning an order dated 12.03.2010 (hereafter the 'impugned award') whereby the Central Government Industrial Tribunal (hereafter the 'Tribunal') held that the charges of misconduct were proved against the petitioner and imposed the punishment of dismissal of the petitioner from the services of the respondent bank.

2. Brief facts that are relevant for examining the controversy in the present petition are as under:-

2.1 The petitioner was working as an employee of the District Courts, Delhi. The petitioner applied for the post of clerk/typist with the State Bank of Indore (now merged with the State Bank of India) for the Delhi region. The respondent bank issued an appointment letter dated 17.06.1983 to the petitioner for joining at Chandni Chowk branch, Delhi. Thereafter, one Mr. P.C. Joshi, Regional Manager of the respondent bank at Indore again issued an appointment letter dated 05.09.1983 to the petitioner for joining branch office at Dabra, Madhya Pradesh. The petitioner protested against his posting at Dabra branch and also made representations to the higher authorities for posting him to Delhi branch. Thereafter, the respondent bank issued an appointment letter dated 28.12.1983 to the petitioner for joining as a clerk/typist at Chandni Chowk branch, Delhi.

2.2 Ms. Sunita Jain, who was also working at Chandni Chowk branch, filed a complaint dated 10.07.1985 with the General Manager of the respondent bank complaining about a letter written by the petitioner to her in September/October 1984 containing objectionable language. She also complained that after she returned from her maternity leave, the petitioner again misbehaved with her. Although the petitioner had tendered a written apology on 06.07.1985 for his indecent behaviour, he again misbehaved with her on 09.07.1985.

2.3 Subsequently, the respondent bank issued a charge sheet dated 23.09.1985 to the petitioner alleging gross misconduct for misbehaving and

using lewd language with Ms. Sunita Jain in September/October 1984 and again in July 1985. The relevant extract of the chargesheet is quoted as under:-

“You gave a letter to Smt. Sunita Jain in September/October, 1984, writing therein - "I am very much disturbed due to you. I am unable to take sound sleep at night please accept my offer, will you like me? Please mark tick yes or No."

After reading the above said letter, Smt. Jain returned it to you. After 8-10 days of this incident, you met Smt. Jain at Red Fort. When she reached at Rickshaw Stand after alighting from the Bus, you went close to her on your scooter and asked her to sit on your scooter. You asked Smt. Jain to sit on your scooter again and again despite her refusals. In the end, Smt. Jain asked you to go and I will come at Bank on rickshaw. On her reaching at Bank, you went close to her and started making vulgar talks e.g. "Madam, I had no mood today to come at Bank, we should go somewhere else". You did not stop talking despite objection of Smt. Jain and said "Madam, you are refusing me again and again and disturbing me". She did not give any reply to your talks. Thereafter, on 3rd July, 1985 you gave her a message "Meet outside the Bank". On 4.7.85 again, you again used indecent words with Smt. Jain and asked "Madam, why you are not cooperating with me, meet me outside the Bank so that we may talk all which I cannot say here". This was asked by you in the presence of Kumari Jyoti Tomar.

On 5.7.85, Smt. Jain felt very bad in coming to the Branch and her eyes were filled with tears, on which, all the lady staff asked Smt. Jain about its reason, on which, Smt. Jain told about the indecent behavior by you with them. On this, all the female staff together on 5.7.85 at 11.00 talked with the Branch Manager and gave the information of the incident in detail to him, on which, the Branch Manager called you in his cabin and told him about all those facts. On repeated directions by the Branch Manager, you orally asked sorry with the 'words that "The Branch Manager is saying, therefore, I am saying sorry".

At that time, on objection by Anju Khurana that you are not voluntarily saying sorry but are saying sorry on directions of the Branch Manager, you asked sorry with the words that "All the lady staff is asking, therefore, I am saying sorry."

On 6.7.85, Smt. Jain's husband, Shri Rakesh Kumar Jain and other members of her family namely Shri Suresh Chander Jain, Shri Khem Chander Jain came in the Branch and talked with the Branch Manager in connection with the incidents occurred with Smt. Sunita Jain (At that time, Shri R.K. Bhargava was also in the cabin of the Branch. Manager) All of them asked to the Branch Manager that he will ask sorry in writing instead of orally. On this, on saying by Shri R.K. Bhargava that if any such incident has occurred, it will be right to say sorry, you were called in the cabin, on which, you asked sorry in writing from the relatives of Smt. Jain, in which, you mentioned that:-

To,

Bhai Rakesh Kumar Ji Sir,

"I ask sorry for the indecent talks, I did with your wife Smt. Sunita Jain. I assure you that I will not commit any such mistake in future."

Rajinder Singh

6.7.1985.

You wrote this apology letter outside the cabin of the Branch Manager and gave to the relatives of Smt. Jain. But after this on 9.7.85, you threatened and tried to frighten Smt. Jain. You said that I am from Scheduled Caste and my name is Rajinder Singh. You cannot do anything wrong to me."

2.4 It is relevant to note that, on 06.07.1985, the petitioner also made a complaint to Station House Officer, Police Station, Lahori Gate, Delhi alleging that Mr. P.C. Sharma (Branch Manager, Delhi), Ms. Sunita Jain and her husband alongwith some goons of her husband had forcibly taken a written apology from him on 06.07.1985.

2.5 The petitioner, by his letter dated 02.10.1985, denied all the allegations or charges leveled against him. The respondent bank was not satisfied with the reply of the petitioner and initiated disciplinary proceedings. Initially, Mr. J.K. Mahajan was appointed as the enquiry officer and after his transfer, Mr. B.L. Pawar was appointed as the enquiry officer. On 08.12.1987, the enquiry officer held that the charges against the petitioner were proved. After considering the report of the enquiry officer, the respondent bank, on 07.05.1988, terminated the services of the petitioner. An appeal preferred by the petitioner against his dismissal order was also rejected. Thereafter, the petitioner raised an industrial dispute challenging his dismissal and the government referred the dispute to the Tribunal. The terms of reference, as modified on 09.01.1992, read as under:-

“Whether the action of the State Bank of Indore in terminating the services of Shri Rajinder Singh s/o Murli, Clerk, Chandni Chowk Branch, Delhi w.e.f. 7.5.88 without issuing any notice is legal and justified? If not to what relief the workman concerned is entitled to?”

2.6 After considering the pleadings, the following issues were settled by the Tribunal:-

“1. Whether the domestic enquiry held against the workman was fair and proper?

2. As in terms of reference.?”

2.7 By an award dated 24.09.1997, the Tribunal rejected the claim of the petitioner and upheld the dismissal order. The said award was successfully challenged by the petitioner in a writ petition (being WP(C) No.4896/1998)

filed before this Court. By an order dated 19.11.2009, this Court set aside the said award and remanded the matter to the Tribunal for *de novo* adjudication.

2.8 Thereafter, the Tribunal examined the matter afresh and by an order dated 06.01.2010, answered the issue no.1 in favour of the petitioner; the Tribunal held that the enquiry proceedings conducted by the respondent bank were vitiated on the ground of being unfair, unjust and violative of principles of natural justice. The Tribunal also set aside the punishment of dismissal awarded to the petitioner by the Disciplinary authority of the respondent bank.

2.9 Thereafter, the petitioner examined himself to disprove the charges of misconduct and Ms. Sunita Jain and Mr Arun Verma were examined on behalf of the respondent bank. By the impugned award, the Tribunal relied on the sole testimony of Ms. Sunita Jain and held that the charges of misconduct, within the meaning of paragraph 19.5(c) and (j) of the Bipartite Settlement dated 19.10.1966, were proved against the petitioner and awarded the punishment of dismissal.

Submissions

3. The learned counsel for the petitioner contended that the Tribunal had failed to consider the facts in its totality and had segregated the facts of sexual molestation and considered them in isolation from other facts, which is impermissible in law. The Tribunal failed to consider that the actions of the respondent bank were vindictive, retaliatory and revengeful. Reliance was placed on **State of Haryana v. Rajindra Sareen: (1972) 1 SCC 267**

and **Jai Krishna Mandal & Anr. v. State of Jharkhand:** (2010) 14 SCC 534.

4. She contended that the Tribunal had relied solely upon the testimony of Ms. Sunita Jain even though there were major contradictions, inconsistency, incoherency and improvements in her statement. Reliance was placed on **Suresh N. Bhusare & Ors. v. State of Maharashtra:** (1999) 1 SCC 220, **Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr.:** (2003) 3 SCC 175 and **Prashant Bharti v. State of NCT of Delhi:** (2013) 9 SCC 293.

5. She submitted that Mr. P.C. Joshi (Regional Manager, Bhopal) had been visiting Delhi frequently for conspiring with Mr. P.C. Sharma and Ms. Sunita Jain against the petitioner, which is evident from the official travel expenses of Mr. P.C. Joshi. Even otherwise, as per Section 10 of the Indian Evidence Act, 1872 physical presence of the conspirator is not essential.

6. She contended that once the enquiry proceedings are vitiated, the statements or records of the said proceedings would also stand quashed and untenable under the law and cannot be relied upon by the Tribunal for adjudicating the misconduct. Reliance was placed on **Neeta Kaplish v. Presiding Officer, Labour Court:** (1999) 1 SCC 517 and **State Bank of India v. R.K. Jain & Ors.:** (1972) 4 SCC 304. It was further contended that after holding that the enquiry proceedings were vitiated, the Tribunal should have reinstated the petitioner. Reliance was placed on **Vikramaditya Pandey v. Industrial Tribunal:** (2001) 2 SCC 423.

7. The learned counsel for the respondent submitted that the Tribunal has passed a reasoned order after considering the evidence adduced by both the parties and therefore, there was no infirmity in the impugned order.

Conclusion and Reasoning

8. The issue to be considered is whether the Tribunal had considered the facts in correct perspective. According to the petitioner, the Tribunal had segregated the issue of sexual molestation from other controversies pointed out by the petitioner. It was argued that the Tribunal had failed to view the factual matrix in its entirety and had merely focused its attention on the allegations made by Ms. Sunita Jain.

9. I am unable to accept the above contention as a bare reading of the impugned award would indicate otherwise; the Tribunal had not only evaluated the evidence of the petitioner but also considered his defence.

10. It is not disputed that on 06.07.1984, the petitioner joined the services of the respondent bank. When the petitioner received his salary, he became aware that charges for subscription of the trade union were deducted from his salary without his consent even though he was not a member of the Trade Union. The petitioner protested against the said deduction and also filed an application to the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947 to this effect. The respondent bank, thereafter, refunded the amount deducted from his salary.

11. According to the petitioner, a false complaint was made by Ms Sunita Jain in view of the disputes raised by him with regard to deduction

of amount for subscription of the trade union. The petitioner also pointed out certain inconsistencies and improvements made by Ms Sunita Jain in her testimony. The petitioner's contentions were considered by the Tribunal and the Tribunal had evaluated the testimony of Ms Sunita Jain as well the evidence led by the petitioner.

12. The Tribunal also considered the petitioner's contention that the Regional Manager had conspired with Ms Sunita Jain to remove the petitioner from the services of the respondent bank. The petitioner contended that the Regional Manager wanted to accommodate another person in the Delhi Branch and since this was frustrated by the petitioner, a conspiracy was hatched to conjure up a false case against him. The Tribunal rejected the said contention as it found no evidence of conspiracy as claimed by the petitioner. The Tribunal also examined the petitioner's appointment letter and the letters sent by one Sh Raheja and concluded that the same did not indicate any conspiracy. The Tribunal further reasoned that if there was a conspiracy to not post the petitioner at the Chandni Chowk Branch, the same would not have been offered to him. As far as the deduction of amount for subscription from petitioner's salary is concerned, the Tribunal considered the testimony of Ms Sunita Jain and also held that it was done in a routine manner and the same did not benefit Ms Sunita Jain in any manner. In the aforesaid circumstances, the contention that the Tribunal had not considered the facts in the entirety but had only focused its attention on the allegations leveled by Ms Sunita Jain, is bereft of any merit.

13. The decisions of the Supreme Court in *Rajindra Sareen (supra)* and *Jai Krishna Mandal (supra)* do not support the petitioner in any manner. In *Rajindra Sareen (supra)*, the respondent (therein) had contended that the order, terminating his services, was malafide and had also referred to various incidents where he had come into conflict with the Chief Minister against whom the allegation of malafide had been leveled. The High Court examined each incident and concluded that none of the incidents could establish the respondent's plea of malafides. It is, in this context, that the Supreme Court held as under:-

“49. Why we are saying that the approach made by the High Court in this regard in considering the allegation of mala fides is not proper is that the High Court has taken each allegation by itself and has held that it is not sufficient to establish mala fides. The proper approach should have been to consider all the allegations together and find out whether those allegations have been made out and whether those allegations when established, are sufficient to prove malice or ill will on the part of the official concerned, and whether impugned order is the result of such malice or ill will. We are emphasising this aspect because in certain cases even a single allegation, if established, will be so serious to lead to an inference of mala fides. But, in certain cases each individual allegation, treated separately, may not lead to an inference of mala fides; but when all the allegations are taken together and found to be established, then the inference to be drawn from those established facts may lead to the conclusion that an order has been passed mala fide, out of personal ill will or malice. The incidents, referred to by the respondent, due to which the Chief Minister is alleged to have acted mala fide, in passing the impugned order, in our opinion, taken individually or collectively, cannot lead to the conclusion that the order has been passed out of malice or ill will. Even accepting that the incidents took place in the manner alleged by him, it is not possible to hold that the Chief Minister has acted

with malice when passing the impugned order. The allegations made by the respondent, as well as the denial of those allegations by the Chief Minister and the third appellant are dealt with by us in the later part of the judgment.”

14. However, it is relevant to note that the Supreme Court considered all the incidents and held that although the incidents referred to by the respondent would show that the respondent had incurred the displeasure of the appellant, the same could not lead to the conclusion that the order terminating his services was tainted with malafide.

15. In the present case, the Tribunal had considered the conspiracy theory, advanced by the petitioner, and had found no material to support the same. In my view, the said decision of the Tribunal cannot be faulted. In *Jai Krishna Mandal (supra)*, it was an admitted position that there was “deep enmity” between the family of prosecutrix and the appellants therein on account of a dispute over a piece of land. The prosecutrix had alleged that she had been raped by the appellants and one other person. The medical report and the evidence of the doctor did not support the prosecution and the doctor had deposed that there was no evidence of rape or injury on the prosecutrix. In those circumstances, the Supreme Court set aside the appellant’s conviction. In the present case, there is no evidence of any deep enmity between the petitioner and Ms Sunita Jain or any other official of the respondent bank. The fact that Ms Sunita Jain had been preparing the salary bill of the petitioner along with other employees and had been deducting union subscription which was objected to by the petitioner, cannot possibly lead to the conclusion that there was any deep enmity between the petitioner and Ms Sunita Jain. It is also not possible to

accept that there was any animosity between the petitioner and the Regional Manager, which would prompt the officials and Ms Sunita Jain to hatch a conspiracy for petitioner's removal. The Tribunal had found that there was no evidence that Mr P.C. Joshi (Regional Manager, Bhopal) was conspiring with Ms Sunita Jain against the petitioner. It is, in this context, that the Tribunal noted that there was no record that Mr P.C.Joshi had come to Delhi at the material time. The learned counsel for the petitioner is correct in her submission that physical presence of a conspirator is not essential; however, in the present case, there is no material or evidence that could reasonably lead to the conclusion that there was any conspiracy between Mr P.C. Joshi, Mr P.C. Sharma and Ms Sunita Jain to get rid of the petitioner. Thus, the conclusion of the Tribunal cannot be faulted.

16. The learned counsel for the petitioner had also drawn the attention of this Court to various inconsistencies/improvements in the testimony of Ms Sunita Jain. Ms Sunita Jain had filed a complaint on 10.07.1985 with the General Manager of the respondent bank. The summary of her complaint is that the petitioner harassed her in September/October 1984. It was alleged that the petitioner had given a letter in writing which used objectionable language; she had returned the letter and requested that he should not have such thoughts in future. Despite the same, a few days later, the petitioner had once again pursued her and insisted to give her a lift on his two wheeler. Ms Sunita Jain rebuffed the petitioner's overtures and declined to accompany the petitioner on his two wheeler. She complained that at the office, he had once again made vulgar comments/suggestions. Ms Sunita Jain stated that this behavior was not reported by her as she was to proceed

on maternity leave. She alleged that on resuming her duties after her maternity leave, the petitioner had repeatedly misbehaved with her. And, this led Ms Sunita Jain to approach the General Manager along with other family members. On 06.07.1985, the petitioner's husband had also come to the branch office to confront the petitioner on account of his misbehavior with Ms Sunita Jain. The petitioner was called to the Branch Manager's cabin and had tendered a written apology.

17. Ms Sunita Jain deposed before the Tribunal on 22.02.2010 i.e. almost 25 years after incident. She confirmed the incidents of September/October 1984 as mentioned in her complaint. In addition, she also deposed that the petitioner had called her to his cabin through a peon and on her declining to come, the petitioner had become aggressive. Apart from the above, Ms. Sunita Jain also stated that as she was pregnant in those days, she had become disturbed and had narrated these facts to her husband who had come to the branch office along with some family members. And, at that juncture, the petitioner had tendered an apology in writing.

18. As is apparent from the above, there is inconsistency in the above testimony and Ms Sunita Jain's earlier complaint. In her complaint dated 10.07.1985, Ms Sunita Jain had referred to a written apology tendered by the petitioner on 06.07.1985. This is after she had resumed her duties on returning from her maternity leave. However she testified that the petitioner had tendered the written apology, when she was pregnant. Further, her complaint did not mention that the petitioner had called her to his cabin through a peon; no such allegation had been made by Ms Sunita Jain earlier. According to the petitioner, the above improvements and

inconsistencies render Ms Sunita Jain's testimony completely untrustworthy and unreliable. The Tribunal noted that Ms Sunita Jain could not recollect the exact dates of the incidents and held that she was not expected to do so after a long time gap. In my view, although there is inconsistency in the testimony of Ms Sunita Jain and her complaint, the same is not sufficient for her testimony to be rejected in toto. The admitted facts are that the petitioner had tendered a written apology for his behavior. Whether the said apology was tendered in September/October 1984 or subsequently in July 1985 is not material. Although, the petitioner had immediately filed a complaint that his apology was forcibly extracted from him, the same must be discounted. There is no explanation as to why Ms Sunita Jain's husband would come to the branch office to extract an apology from the petitioner. The Tribunal had also taken note of the fact that it takes a certain amount of courage for a lady to come and depose regarding the harassment meted out to her and such testimony should be given due weightage. I find no infirmity with this approach.

19. The judgments **Suresh N. Bhusare** (*supra*), **Vimal Suresh Kamble** (*supra*) and **Prashant Bharti** (*supra*) relied upon by the petitioner are not applicable to the facts of the present case. First and foremost, the said decisions relate to criminal proceedings for offences under the Indian Penal Code. There is no dispute that in the proceedings before the Labour Court/Industrial Tribunal, strict rules of evidence are not applicable. It is also well settled that the standard of proof, required in criminal proceedings and those before the Labour Court/Industrial Tribunal, are different. Before the Labour Court/Industrial Tribunal, the standard of proof is not that the

misconduct must be proved beyond reasonable doubt but whether on preponderance of probability, it could be concluded that the employee is guilty as charged.

20. Secondly, the aforesaid decisions of the Supreme Court have been rendered in a completely different set of facts and are thus wholly inapplicable to the facts of the present case.

21. The next issue raised by the petitioner was that the Tribunal was bound to reinstate the petitioner once it had found that the enquiry proceedings against the petitioner were vitiated. I find it difficult to accept the said contention of the petitioner. It is well settled that even in cases where inquiry proceedings have been held to be *non est* or declared to be invalid, the Labour Court does retain the power to call upon the employer to establish the charge against the workman.

22. In **Amrit Vanaspati Co. Ltd. v. Khem Chand**: (2006) 6 SCC 325, a similar contention was rejected by the Supreme Court. In that case, it was contended that once the Labour Court had held the domestic inquiry to be irregular or illegal, the Court ought not to have permitted the management to produce additional evidence for proving the charges. The Supreme Court rejected the aforesaid contention and reiterated the settled principles for the exercise of jurisdiction by the Tribunal, by referring to an earlier decision in **Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.**: (1973) 1 SCC 813. The relevant extract of the judgment in *Amrit Vanaspati* (*supra*) is quoted as under:-

“8. This Court in a judgment in Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. (1973) 1 SCC 813 exhaustively referred to various decisions of this Court and gave a clear picture of the principles governing the jurisdiction of the Tribunals when adjudicating disputes relating to dismissal or discharge. Para 32 of the said judgment is reproduced here: (SCC pp. 827-29)

“32. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) *The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.*

(6) *The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.*

(7) *It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.*

(8) *An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.*

(9) *Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.*

(10) *In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid*

compensation is, as held by this Court in Panitole Tea Estate v. Workmen [(1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal.”

This Court in the above judgment held that even if no inquiry has been held by the employer or the inquiry held is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra. Hence, the submission made by the learned counsel for the respondent has no merit in view of the above verdict of this Court and referred to above.”

23. The Supreme Court in **Divyash Pandit v. NCCBM**: (2005) 2 SCC 684 had held that even in cases where a party had not made any prayer for leading additional evidence, the power of the Tribunal to require or permit the parties to lead additional evidence was not fettered. The relevant extract of the said judgment reads as under:-

“8. The appellant has challenged this decision of the High Court before us. We are of the view that the order of the High Court dated 2-12-2002 as clarified on 3-3-2003 does not need any interference. It is true no doubt that the respondent may not have made any prayer for (*sic* submitting) additional evidence in its written statement but, as held by this Court in *Karnataka SRTC v. Laxmidevamma* [(2001) 5 SCC 433] this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman.”

24. Reliance placed by the petitioner on the decision of the Supreme Court in *Vikramaditya Pandey (supra)* is clearly misplaced. In that case, the workman challenged his termination which was by way of an oral order. The Industrial Tribunal held that terminating the workman's services was clearly retrenchment as defined under Section 2(s) of the U.P. Industrial Disputes Act, 1947 and was contrary to Section 6(n) of the said Act. Having so found, the Tribunal declined to grant the relief of reinstatement on the ground that a regular appointment could be made only by U.P. Cooperative Institutional Service Board as per U.P. Cooperative Society Employees Services Regulation, 1975 and, therefore, the workman could not be reinstated. However, the Tribunal granted the benefits of retrenchment with 12% interest. The said award was not challenged by the management but was assailed by the workman before the High Court. The High Court concurred with the finding recorded by the Tribunal that it was a case of retrenchment but did not interfere with the award in view of the U.P. Cooperative Society Employees Services Regulation, 1975. The workman carried the matter before the Supreme Court. The Supreme Court held that once an employee's termination had been held to be illegal, the normal relief of reinstatement with back wages would be available to the employee. It was held that the management could show special circumstances why such relief ought not to be granted but in that case no such special circumstances were pleaded. The Supreme Court set aside the decision of the Tribunal and the High Court that the workman could not be reinstated, in view of the aforementioned regulations. Clearly, the issues involved in the present case are completely different from the ones considered in that case. In that case, the employer had accepted that the

termination of the services of the employee was illegal. There was also no occasion for any additional evidence to be led. Plainly, the said decision would have no application to the facts of the present case.

25. The petitioner had urged that the Tribunal erred in law while relying on the statements recorded during the enquiry proceedings after vitiating the enquiry proceedings. This contention of the petitioner is also unmerited. In the present case, the Tribunal - after holding that the enquiry proceedings were vitiated- examined witnesses of both the parties and passed the impugned award after considering the evidence adduced by the parties. The judgments of the Supreme Court in *Neeta Kaplish (supra)* and *State Bank of India v. R.K. Jain (supra)* as relied upon by the counsel for the petitioner are also not applicable in the facts of the present case.

26. In *Neeta Kaplish (supra)*, the Labour Court, after holding that the domestic enquiry was vitiated, called upon the management to adduce fresh evidence; however, the management failed to adduce fresh evidence and as a consequence thereof, the workman also did not adduce fresh evidence. Thereafter, the Labour Court upheld the termination order as the workman failed to adduce any fresh evidence. On appeal, the Supreme Court set aside the termination order and observed that since the management failed to adduce the fresh evidence after the domestic enquiry was declared as vitiated, the management has to suffer the consequences. This is not the case here; the management has led evidence to make good the charges leveled against the petitioner and the Tribunal passed the impugned award after considering the evidence of both the parties.

27. In *State Bank of India v. R.K. Jain* (*supra*), the management abandoned the first enquiry without any fault of the workman. In the second enquiry initiated by the management, the workman requested that either the witness who were examined during the first enquiry be summoned by the management at its own cost as the workman had incurred heavy expenses in the previous enquiry or the evidence adduced by the witnesses in previous enquiry may be adopted in the second enquiry. The said request of the workman was rejected and the workman was dismissed from service. In this context, the Supreme Court held that the request of the workman was a reasonable one and set aside the dismissal order on the ground of violation of principles of natural justice. In the present case, the principles of natural justice have been adhered to and there is no procedural infirmity in the decision making process.

28. In cases where no domestic enquiry is held or if so held has been held to be vitiated, it is necessary that the Tribunal evaluates the evidence adduced before it. The Tribunal has to rule out the possibility that the allegations have been leveled against the workman with ulterior motives or are *mala fide*. Further the Tribunal needs to ensure that the proceedings are not the result of victimisation or an unfair labour practice.

29. In the present case, the Tribunal has appreciated the evidence and arrived at a conclusion. It is well established that this court, while exercising its powers under Article 226 of the Constitution of India, would not interfere with the findings of fact unless the same are perverse or based on no evidence at all. The Supreme Court in **Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan**: (2005) 3 SCC 193 held as under:-

“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.”

30. In **Sadhu Ram v. Delhi Transport Corporation**: (1983) 4 SCC 156, a three judge bench of the Supreme Court had stated the above principle in the following words:-

“3. ... The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which

the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management.”

31. In view of the aforesaid, I find no reason to interfere with the impugned award. Accordingly, the present petition is dismissed. No order as to costs.

FEBRUARY 18, 2015
RK

VIBHU BAKHRU, J

