

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE**

**WRIT PETITION NO. 3066 OF 2016**

ICICI Bank Ltd.

...Petitioner

V/s.

Babasaheb Dhanpal Gat (Desai) & Ors.

...Respondents

**WITH**

**WRIT PETITION STAMP NO. 10310 OF 2016**

....

Mr. Ratnakar Pai a/w Mr. Mayur Bhojwani and Ms. Prangana Barua, i/b. Manilal Kher Ambalal and Co., for the Petitioner in WP No. 3066 of 2016 and Respondent in WP (ST.) No. 10310 of 2016.

Mr. Manoj Patil for Respondent in WP No. 3066 / 2016 and Petitioner in WP (ST.) No. 10310 / 2016.

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**CORAM : S.C. GUPTE, J.**

**DATED : 21<sup>st</sup> June, 2016**

**JUDGEMENT :**

This writ petition, filed under Articles 226 and 227 of the Constitution of India, challenges awards passed by the Labour Court at Kolhapur on 13<sup>th</sup> February, 2014 ( Part-I Award) and 15<sup>th</sup> May, 2014 (Final Award). The awards are passed on a reference made under the Industrial Disputes Act, 1947, in pursuance of a demand notice issued

by the first respondent workman, complaining of illegal termination from the services of the petitioner.

2. The respondent workman was employed initially with Sangli Bank (now merged with the petitioners) at its branch in Tasgaon District, Sangli, and was working as an Agricultural Assistant. ( Sangli Bank was merged with the petitioner under a scheme of amalgamation w.e.f. 19<sup>th</sup> April, 2007). The Petitioner's case is that on 5<sup>th</sup> December, 2002, a staff member at the branch, one Dilip Hingmire, arranged a party, where liquor and food were served. This party was attended by six colleagues of Hingmire. After this party, except Hingmire and one peon all others left for their respective residences. Thereafter, Hingmire and the Peon, one B. N. Khokade, came at Hotel '*Pranav Garden*' where the first respondent workman was present. On the next day, the first respondent handed over to the bank keys which Hingmire was supposed to have with him. Hingmire was, thereafter, not traceable for 2 to 3 days, after which his dead body was found in a well at village Kawathe Ekand, near about 6 to 7 kilometers from Tasgaon. Thereafter, on 23<sup>rd</sup> December, 2002 the first Respondent was arrested by police in connection with Hingmire's death. A news

item to that effect was flashed near about in all Marathi newspapers circulating within Sangli District.

3. Taking note of this fact, which according to the petitioner tarnished its image and was prejudicial to its interest, the petitioner suspended Khokade and the first respondent on 7<sup>th</sup> February, 2003. A charge sheet was issued against the respondent workman on 11<sup>th</sup> February, 2003, in accordance with the bi-partite settlement between the petitioner and its employees, alleging two misconducts, namely, (i) acting prejudicially to the interest of bank, and (ii) tarnishing / damaging the image of the bank in the eyes of public. The charge sheet was replied by the respondent workman, denying the fact that he was in any way involved with the death of Hingmire. An enquiry was, thereupon, initiated against the respondent workman. The enquiry officer submitted his report on 7<sup>th</sup> August, 2003, holding the respondent guilty of the misconduct complained of. The petitioner thereupon issued a notice seeking an explanation from the respondent, which was furnished by the respondent, denying the findings recorded by the enquiry officer. A show cause notice was thereafter issued by the petitioner to the respondent, proposing his dismissal from its

services. By its order dated 30<sup>th</sup> October, 2003, the petitioner terminated the services of the respondent. A departmental appeal preferred by the respondent against the order of termination was dismissed by the Appellate Authority by its order dated 23<sup>rd</sup> September, 2004. In course of time, the Criminal Prosecution initiated by the State in respect of the death of Late Hingmire, resulted into acquittal of the respondent workman from the charge of murder. The Respondent, thereafter, issued a demand notice on 30<sup>th</sup> October, 2015 requiring the petitioner to reinstate him, which came to be rejected. The rejection was followed by a conciliation proceeding and on its failure, the present dispute was referred by the appropriate government to the Labour Court, under the Industrial Disputes Act, 1947.

4. The Labour Court held in its impugned Part-I Award that the enquiry conducted against the workman was against the principles of natural justice and the award was perverse. The petitioner was granted liberty to justify its action of dismissal before the Court. During further proceedings of the reference, despite having the opportunity to justify its action by leading appropriate evidence, the

petitioner did not produce any evidence. The petitioner and its advocate, after attending a few dates and applying for adjournments, did not remain present on the subsequent dates before the Labour Court. In the premises, by its Final Award dated 15<sup>th</sup> May, 2014, the Labour Court declared the termination of the service of the respondent workman as illegal and directed the petitioner to reinstate him in his original post with continuity of service and consequential service benefits with 30% back wages.

5. Both the petitioner and the respondent workman are in challenge from that order. The petitioner challenges both the Part-I Award and the Final Award in the present petition, whilst the respondent challenges the refusal of the Labour Court to grant him full back wages in the Final Award.

6. It is submitted by Mr. Pai, learned counsel for Petitioner, that the impugned Part-I Award is perverse inasmuch as it did not consider the fact that the respondent workman had failed to discharge the burden of proof by examining himself and showing that the enquiry held against him by the petitioner was not fair or proper. Learned counsel,

relying upon the decision of Allahabad High Court in the case of “**V.K. Raj Industries Vs. First Labour Court, Kanpur, and Ors. reported in II-LLN Page No. 498**” and the decision of our court in the case of “**Narang Latex and Dispersions Pvt. Ltd. Vs. S.D. Suvarna (Mrs.) & Anr. reported in 1194 II-CLR 51**” following that decision, submits that the respondent workman has to discharge the burden of proof that his termination was not proper and it would be for him to show that the domestic enquiry was not fair or proper and therefore, the order of dismissal was wrongful. There is no quarrel with this proposition. That, however, does not mean that in every case, the aggrieved workman must lead evidence before the court in justification of his case that the domestic enquiry was not fair or proper or that the findings of the enquiry officer were perverse and therefore, the order of dismissal was wrongful. It is quite possible, in a given case, on the basis of materials which are on record and which are not disputed by the employer, that the enquiry may be shown to be demonstrably unfair and improper, and / or that the finding of the enquiry officer may be assailed as perverse, rendering the order of dismissal wrongful.

7. The Labour Court, in the present case, has come to the finding of an unfair and improper enquiry and perversity of the findings of the enquiry officer on the basis of material on record, which was not disputed by the parties. In the first place, the Labour Court has noted that the charge sheet was not issued to the respondent workman for his involvement in the murder of late Hingmire, and yet the enquiry officer placed heavy reliance on the evidence of the petitioner's witnesses seeking to connect the respondent workman to the offence of murder. The Labour Court, in the second place, has noted that though the respondent workman offered himself for cross-examination, treating his statement in reply as his defence, he was not cross-examined by the petitioner and yet his unchallenged evidence was not considered by the enquiry officer. The Labour Court has further noted that the charges of misconduct levelled against the respondent were not regarded as "gross misconduct" under the applicable bi-partite agreement. Neither tarnishing of the bank's image nor acting prejudicially to the interest of the bank in itself was a misconduct which could sustain a major penalty of dismissal. Whereas tarnishing of the bank's image was not a serious misconduct at all, acting prejudicially so as to qualify as a gross misconduct ought to

result into, or involve the bank in, a serious loss, implying thereby that the alleged act of the delinquent employee must be related to the day to day transactions of the bank and cause serious loss to the bank and not to an incident which happens outside the bank's premises and is unconnected with the duties of the employee. The enquiry officer, in the premises, has observed that the charges levelled against the delinquent employee were outside the purview of the bi-partite agreement and could not sustain the action of termination of service of the respondent by the petitioner. In the premises, the Labour Court has held that the enquiry was not fair or proper and the findings recorded by the enquiry officer were perverse. The impugned award of the Labour Court can be said to be based on a reasonably possible view on the basis of uncontested material on record. It cannot be termed as unsustainable or assailed on the ground that no evidence in support of his case of an unfair or improper enquiry or perverse findings, was led by the workman before the Court.

8. Secondly, it is submitted by Mr. Pai that Part-I Award declared by the Labour Court was not published as required by section 17 of the Industrial Disputes Act, 1947. It is submitted that an interim award

comes within the definition of 'award' under section 2(b) of the Industrial Disputes Act, 1947. Learned counsel relies on a judgment of the Supreme Court in the case of “*Management of Hotel Imperial, New Delhi and Ors Vs. Hotel Worker's Union, AIR 1959 SC 1342*”. In this case, the Supreme Court held that even an interim determination of any question relating to the industrial dispute by way of an interim award would have to be published as required under Section 17 of the Act. Learned Counsel also relies on the judgment of the Supreme Court in the case of “*Sirsilk Limited Vs. Government of Andhra Pradesh, AIR 1964 SC 160*” in support of his submission that the provisions of Section 17 are mandatory in nature.

9. No doubt as held by the Supreme Court in this case, the provisions of section 17 are mandatory. The question, however, is what is the effect of non publication of a Part-I Award. Are further proceedings in the reference for determination of the Final Award thereby rendered illegal? It is submitted that Sections 17 and 17-A of the Industrial Disputes Act, 1947 provide that if the award is not published, it cannot be enforced. Firstly, when the Labour Court considers the reference further, after declaring Part-I Award, it cannot

be said to be thereby enforcing Part-I Award. Secondly, and in any event, the petitioner not only had an adequate notice of the award but did actually participate in further proceedings of the reference without raising any objection concerning non-publication of Part-I Award. It is too late in the day for the petitioner to challenge the Final Award on the basis that Part-I Award, which preceded it, was not published under Section 17 of the Industrial Disputes Act, 1947. The objection appears to be a clear afterthought and not a bonafide plea. There is no merit, thus, in the contention of Mr. Pai.

10. The judgment of the Supreme Court in the case of “***Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Ors. reported in SCC 1980 page no. 420***” has no bearing on the facts of our case. In the case before the Supreme Court, the question was, whether under section 17-A of the Industrial Disputes Act, the award had become enforceable. The court held that the proceedings with regard to a reference under Section 10 of the Act were deemed to be concluded only after expiry of 30 days from the publication of the award. Till then, the tribunal continued to retain jurisdiction over the dispute referred to it. This observation has really no bearing on the

facts of our case. The question here is not whether the tribunal retains jurisdiction or has powers to entertain any application, which was the context in which the Supreme Court considered the question of publication of an award and its enforceability after the expiry of 30 days from such publication under Section 17-A in Grindlays Bank case (Supra). The question here is, whether the Labour Court could have gone ahead with further inquiry in the reference post Part-I Award and rendered its Final Award. As I have observed above, this the Labour Court could certainly have done in the facts of the case.

11. Mr. Pai further submits that assuming without admitting that the Labour Court could proceed with further inquiry in the reference without publication of Part-I Award, the Final Award passed by the Labour Court is in violation of Rule 10-B (9) read with Rule 22 of the Industrial Disputes (Central) Rules, 1957. The submission is that these Rules require the Labour Court or the State or National Industrial Tribunal, as the case may be, to be first satisfied that the absence of the party was not on justified grounds, before proceeding ex-parte against it. It is submitted that without considering the question of sufficient cause for the absence of the party, the Labour Court cannot

proceed ex-parte. It is submitted that in any event, there must be an order recording the court's decision to proceed ex-parte, before actually proceedings to hear the matter ex-parte. Learned counsel relies on the judgment of the Supreme Court of ***“Anil Sood Vs. Presiding Officer, (Labour Court II) reported in (2001) 10 SCC Page No. 534”***, in this behalf. In the present case, as the Roznama of the proceedings before the Labour Court, as also the relevant pursis and the order passed thereon indicates, after Part-I Award was declared by the Labour Court, the petitioner and its advocate were absent on two dates, i.e. on 13<sup>th</sup> February, 2014 and 28<sup>th</sup> February, 2014; On the next date, i.e. 15<sup>th</sup> March, 2014, the petitioner applied for time to lead evidence to justify the order of dismissal; On this request, the Labour Court was pleased to grant time as a last chance; Once again, on 10<sup>th</sup> April, 2014, the petitioner further sought time; That application was rejected by the Court and the matter was posted on 24<sup>th</sup> April, 2014, for evidence of the petitioner. On that date, the petitioner and its advocate were absent. It is in these circumstances that the Labour Court passed an order closing the evidence of the petitioner and posted the matter for evidence of the respondent. The Respondent chose not to lead any further evidence and instead made

his submissions. The matter was before the Labour Court on 2<sup>nd</sup> May, 2014, 8<sup>th</sup> May, 2014, 13<sup>th</sup> May, 2014 and 15<sup>th</sup> May, 2014, on all of which dates the petitioner and its advocate remained absent. On 15<sup>th</sup> May, 2014, the Court declared its Final Award. On these facts, it cannot possibly be suggested that the petitioner did not have adequate opportunity to present its case before the Labour Court post Part-I Award. There is no case at all of any sufficient cause for the absence of the petitioner and its advocate. It cannot be suggested that this is a case where the petitioner is visited with an award without notice and that the award is a nullity for that reason, which was the case in ***“Anil Sood Vs. Presiding Officer, (Labour Court-II) reported in (2001) 10 SCC Page No. 534”***. There is no merit in the contention that the Labour Court, in all cases, is bound to first consider the matter of sufficiency of reasons for the absence of a party and proceed ex-parte only after passing an order declaring its intent to proceed ex-parte. Rule 10-B(9) read with Rule 22 does not suggest any such legal need.

12. Lastly, it is submitted by Mr. Pai that the Final Award passed by the Labour Court is liable to be set aside even on merits. It is submitted that the scope of scrutiny of a domestic enquiry before the

Labour Court is limited. The court has to merely see whether there is some evidence to support the finding; whether the evidence is such as a prudent and reasonable man would accept; whether the approach of the enquiry officer is judicious; and whether the rules of natural justice have been followed. If these tests are satisfied, it is submitted, there can be no interference with the subjective opinion of the enquiry officer at the hands of the Labour Court. Learned counsel, in this behalf, relies on a decision in the case of ***“Suryabhan Maruti Avhad Vs. Mahindra & Mahindra Limited reported in 2011-III-LLJ-339 (Bom)”***.

13. As noted above, the enquiry officer's report cannot be sustained as a possible conclusion supported by evidence on record. The material cannot support the charge of either tarnishing the bank's image or acting prejudicially to its interest. Besides, the charges, even if proved, are not capable of sustaining the punishment meted out by the petitioner to the respondent. The domestic enquiry, which was held in pursuance of the bi-partite agreement between the parties, does not permit treatment of the alleged charges as gross misconduct. Considering that the domestic inquiry did not involve the question as

to whether or not the delinquent employee was guilty of any criminal charge and, in any event, the respondent having been acquitted of the criminal charges by a competent court of law, it cannot be suggested that merely because news in connection with an alleged offence (which cannot be said to have been committed by the respondent) was flashed in the newspapers, the bank's image can be said to be tarnished in the eyes of public or that the respondent's act is in any way prejudicial to the interest of the bank. The respondent's case is that he did not commit any offence and accordingly, did secure an acquittal from the Court. The respondent has no control over any news published in newspapers and cannot be held responsible for such news. In any view of the matter, thus, the finding of the enquiry officer and the action of the petitioner based thereon cannot be sustained.

14. There is, accordingly, no interference called for with the impugned awards of the Labour Court. The petition is, accordingly, dismissed. There shall be no order as to costs.

15. In the companion petition, the respondent workman has challenged the Final Award of the Labour Court to the extent that it

denies 70% of back wages to him. The Labour Court has come to the conclusion that the respondent did not initially plead in his statement of claim that he was unemployed during the period of his termination; this fact was pleaded for the time by way of an amendment effected in the year 2013. The Labour Court has further noticed that the workman did not even depose to the fact of his unemployment on oath before the Court. Considering, however, the circumstances (i) that there was no denial from the other side about the want of his gainful employment or a case that he had sufficient income to run his family and (ii) that he was illegally terminated alleging his involvement in the murder of a colleague, the Labour Court held the respondent to be entitled to receive 30% of back wages. The initial burden of proof that the workman remained unemployed is on the workman, keeping in mind the provisions of Section 106 of the Evidence Act, 1872 (see *“Novartis India Limited Vs. State of West Bengal and others reported in (2009) 3 SCC”*). Learned counsel for the workman relies on the judgment of the Supreme Court in the case of *“Jasmer Sing Vs. State of Haryana & Anr. reported in 2015 Legal Eagle (SC) 24”* to contend otherwise. The Supreme Court has held in that case that if the employer wants to deny back wages to the employee or contest his

entitlement to get consequential benefits, it is for him to specifically plead and prove that during the intervening period, the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer, would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages. It is true that the workman cannot be expected to bear the legal burden of proving that he was not gainfully employed during the relevant period. That would be putting a burden to prove a negative fact on him. At the same time, the initial onus must be discharged by him about his not having been gainfully employed by pleading and stating on oath that he had no other employment to sustain him and his family. Once such initial onus is discharged by him, the onus would shift onto the employer to prove the factum of the workman's gainful employment elsewhere. No infirmity can be found, thus, with the approach of the Labour Court in this behalf. As for the assessment of the quantum of back wages awarded, namely, 30%, the same cannot be said to be unreasonable or absurd.

16. In the premises, there is no merit in the companion petition and the same is also dismissed. There shall be no order as to costs.

**( S.C. GUPTE ,J. )**