

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3969 of 2015

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UCO Bank, a body corporate constituted under the Banking Companies acquisition and Transfer of undertaking Act, 1970 and having its Head Office at Kolkata and Zonal Office in Mauryalok Complex, Patna through its Dy. Zonal head namely Gautam Kumar Sinha, S/o Late L.R.K. Sinha 4th Floor, Block A, Mauryalok Complex, P.S. Kotwali, District Patna.

.... Petitioner

Versus

1. The Union of India through the Secretary, Government of India, Ministry of Labour, Shastri Bhawan, New Delhi.
2. The Regional Labour Commissioner (Central), Ministry of Labour, Government of India, Block A, 2nd Floor, Mauryalok Complex, Patna.
3. The Assistant Labour Commissioner (Central), Ministry of Labour, Government of India, Block A, 2nd Floor, Mauryalok Complex, Patna.
4. The Central Government Industrial Tribunal (No. 1), Dhanbad through its Secretary.
5. The Secretary, Indian National Trade Union (Congress), District Council, Bhagalpur, Ghantaghar Pani Tanki, P.S. Kotwali, District Bhagalpur.
6. Madhusudan Jha S/o Late Tej Narayan Jha Resident of Sikandarpur Main Road, Ward No. 13, P.S. Muzaffarpur (Town), District Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey, Advocate
For the Union of India : Mrs. Kanak Verma, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-11-2017

Heard learned counsel for the petitioner and learned counsel for the Union of India. Despite valid service of notice, respondent no.6 has neither appeared in person nor through lawyer to contest the matter.

2. The petitioner has prayed for quashing the award dated 16.04.2014 passed by the Central Industrial Tribunal (No.1), Dhanbad (for short 'Tribunal') in Reference Case No.51 of 2008



whereby the Tribunal observed as under :

“5. But in the opinion of the Tribunal it is not proper to keep the workman under dismissal. If the workman will be given employment in the bank and kept under vigil, the money defalcated by the workman can be recovered from the salary and allowance of the workman. Hence it is proper the workman be reinstated in the job without back wages.”

3. By order dated 17.10.2008, the Central Government, in exercise of its power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication :-

SCHEDULE

“Whether the action of the management of UCO Bank in imposing penalty of Dismissal from Bank’s service without notice vide order dated 26.07.2007 on Sh. Madhusudan Jha is legal and justified? What relief the concerned workman is entitled to?”

4. Learned counsel for the petitioner submitted that the learned Presiding Officer has passed the award without appreciating the facts and the law involved in the case. He submitted that the award is perfunctory and the reference made to the Tribunal has not even been answered. He submitted that the learned Presiding Officer of the Tribunal has not even considered the facts of the case and no reason has been assigned by him while passing the award dated 16.04.2014. According to him, the observations made in the award



are factually incorrect and contrary to the records of the case which clearly shows that the learned Presiding Officer without applying his judicial mind has passed the award in the most mechanical and arbitrary manner in utter haste. He submitted that the Tribunal failed to consider the fact that the workman had already completed the age of retirement on 01.08.2007. It has wrongly mentioned that the pending CBI case may take a very long period and it is not known what will be result of the same. He submitted that even though there were materials on record to show that the workman had been convicted by the learned Special Judge, CBI, North Bihar, Patna in Special Case No. 79 of 1989 vide judgment dated 12th August, 2010 for the offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code and Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 read with 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, he has erroneously recorded that the CBI case is pending against the workman for disposal and the pending case in CBI may take a very long period. He submitted that the impugned award is illegal, invalid, perverse and suffers from error of law as well as record and deserves to be set aside.

5. Mrs. Kanak Verma, learned counsel appearing for the Central Government submitted that till date she has not received instructions into the matter. However, she conceded that the award



passed by the Tribunal is perfunctory and the issue referred to it has not been answered.

6. I have heard learned counsel for the petitioner and the Union of India and perused the record.

7. It would be manifest from the record that while the workman Madhusudan Jha (respondent no.6) was posted as clerk in Club Road Branch, Muzaffarpur, on 15.06.1987 and 28.08.1986, he is alleged to have opened two fictitious accounts bearing SB A/c Nos. 9580/44 and SB A/c No. 9186/42 in the name of Sri Bimal Gupta and Sri Sushil Kumar in the said Branch and credited the said accounts by fake entries from time to time and, between 28.08.1986 and 26.11.1988, withdrew a sum of Rs. 3,79,000/- from SB A/c No. 9580/44 and Rs.1,39,400/- from the SB A/c No. 9186/42 and thus deliberately misappropriated Rs.5,18,400/- in the said accounts, which constituted gross misconduct as they were acts prejudicial to the interest of the Bank within the meaning of clause 19.5(j) of the Bipartite Settlement and, as such, he was issued charge-sheet on 13.03.1989 wherein three charges were made against him and he was directed to submit his explanation within 7 days from the receipt of the charge-sheet.

8. After receipt of the charge-sheet, the respondent no.6 did not submit his reply to the charges. He, however, submitted his reply



on 13.04.1989 stating therein that the Assistant General Manager of the Bank is not the competent authority to deal with the disciplinary proceeding against him.

9. Owing to the aforesaid fraudulent withdrawal of the amount from the Bank, the CBI also instituted a case vide RC No. 43(A)/1988, Patna on 04.12.1988 against the respondent no.6 and the CBI, after investigation, submitted charge-sheet against him. On the basis of materials collected during the course of investigation and the police report submitted under Section 173(2) of the Code of Criminal Procedure, charges were framed against the workman for the offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code and Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 read with 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

10. In the aforesaid criminal trial, the learned Special Judge, CBI, North Bihar, Patna vide judgment dated 12th August, 2010 held the workman guilty of the charges and after hearing on the point of sentence him under different charges.

11. It would be pertinent to note here that during pendency of the criminal trial, the workman had preferred a writ petition before this Court vide C.W.J.C. No. 10533 of 2000 against the order of his suspension. The writ petition was disposed of by this Court vide order



dated 13.03.2002 observing as under :-

“It appears that a criminal case was also instituted against the petitioner on substantially the same charges. The criminal case remains pending and presumably it is for this reason that the respondent authorities have kept the proceeding in the disciplinary action in abeyance. As the disposal of the criminal case and consequently that of the disciplinary action has been delayed inordinately, the petitioner may submit, in writing, before the disciplinary authority that he would have no objection in case the disciplinary proceedings are taken up even during the pendency of the criminal case.”

12. This Court further observed *“In case such a petition is filed by the petitioner the disciplinary authority may consider the desirability of resuming the disciplinary proceeding and concluding it without any undue delay.”*

13. After disposal of C.W.J.C. No. 10533 of 2000, the respondent no.6 did not file any application for continuation of the disciplinary proceeding. However, the Inquiry Officer after adopting the due process of law concluded the inquiry and submitted his enquiry report on 08.06.2007 along with his letter dated 14.06.2007 to the Regional Manager, UCO Bank, Regional Office, Patna. During course of enquiry, the Inquiry Officer found the charges proved against the workman. A copy of the inquiry report dated 08.06.2007 was sent to the workman by the disciplinary authority vide letter dated 19.06.2007 and he was advised to sent his submission, if any,



on the inquiry report within ten days of receipt of the report. The respondent no.6 was also provided opportunity of personal hearing on proposed punishment and, accordingly, he appeared on 25.07.2007 for personal hearing before the Disciplinary Authority. The Disciplinary Authority after examining the materials available on record and also after objectively applying his mind to the allegations and substantiated charges and in the light of the argument put forth by the workman concurred with the finding of the Inquiry Officer and awarded punishment to the workman vide order dated 26.07.2007. Thereafter, an industrial dispute was raised by the Workman Union before the Assistant Labour Commission (Central), Patna whereby it was prayed to forward with the recommendation to the Government of India, Ministry of Labour and Employment to refer the matter to the Tribunal for adjudication. In the said proceeding, a reply was filed by the Management of the UCO Bank on 07.11.2007 and it was prayed to dismiss the petition filed by the workman and drop the conciliation proceeding. A rejoinder was also filed by the workman on 22.04.2008. Thereafter, vide order dated 17.10.2008, the Central Government in exercise of power conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the I.D. Act, 1947 referred the dispute for adjudication to the Tribunal.

14. The impugned award dated 16.04.2004 passed by the



Tribunal is in 5 paragraphs out of which para-1 is exactly what has been noted in para-3 of the instant judgment and paras-2 to 5 read as under :-

“2. The case is received from the Ministry of Labour on 03.11.2008. After notice, both parties appeared, the workman files their written statement on 09.04.2009 and the management files their written statement on 08.10.2009.

2. The short point involved in this case that the workman who is a bank employee has been dismissed by the bank management for defalcation of bank money.

4. The departmental enquiry conducted by bank held fair and proper and the said order dated 01.05.2013 has remained unchallenged. It is learnt that a C.B.I case is pending against the workman for disposal. The pending case in C.B.I may take a very long period. It is not known what will be the result of the same mere pending of the case, will not find the workman guilty.

5. But in the opinion of the Tribunal it is not proper to keep the workman under dismissal. If the workman will be given employment in the bank and kept under vigil, the money defalcated by the workman can be recovered from the salary and allowance of the workman. Hence it is proper the workman be reinstated in the job without back wages.”

15. In para-4 of the award the Tribunal has recorded that the departmental enquiry conducted by the bank was fair and proper and has remained unchallenged but without assigning any reason in para-5 it has opined that it is not proper to keep the workman under dismissal.



16. The observation made by the Tribunal that if the workman will be given employment in the Bank and kept under vigil, the money defalcated by the workman can be recovered from salary and allowance of the workman and hence it is proper to reinstate the workman in the job without back wages is neither reasonable nor in accordance with law and is a glaring example of total non-application of mind. The Tribunal completely failed to appreciate the fact that the workman had completed the age of retirement as back as on 01.08.2007.

17. It has been submitted by the petitioner that it was brought to the knowledge of the Tribunal that the workman has been convicted by the trial court by filing rejoinder of the supplementary written statement filed on behalf of the workman but the Tribunal in its award dated 16.04.2014 has erroneously mentioned that the CBI case is pending and may take a very long period and it is not known what will be the result of the case. As noted above, the workman has not chosen to contest despite valid service of notice. In absence of any contest there is no reason to disbelieve the submission made by the petitioner. Thus, the observation of the Tribunal is factually incorrect and contrary to the records of the case.

18. Even otherwise, the impugned award dated 16.04.2014 has been passed in the most casual and perfunctory manner. It



completely lacks reason in support of conclusion, which is the life of law. Reason is an indispensable component of a decision making process. A non-reasoned and non-speaking order smacks of colourable and arbitrary exercise of judicial/ quasi judicial/ administrative power.

19. For the reasons recorded, hereinabove, the impugned award dated 16.04.2014 passed by the Tribunal in Reference Case No. 51 of 2008 is set aside.

20. The application stands allowed.

21. As the respondent workman has already crossed the age of superannuation and has not chosen to contest the matter before this Court, I do not think it appropriate to remit the matter back to the tribunal for hearing afresh on the reference made by the Disciplinary Authority. However, the registry is directed to transmit a copy of the judgment to the Tribunal forthwith.

(Ashwani Kumar Singh, J.)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21-11-2017
Transmission Date	

