

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 35 of 2011**

(Arising out of order dated 14.12.2010 in Writ Petition No. 3836 /1989 of the learned Single Judge of this Court)

1. Bilaspur Raipur Kshetriya Gramin Bank, through it's Chairman, Head Office at Dayalband, Bilaspur, M.P. (Now Chhattisgarh)
2. Chairman Bilaspur Raipur Kshetriya Gramin Bank, Head Office, Dayalband Bilaspur Mp (Now CG)
3. Board Of Directors Through The Chairman Bilaspur Raipur Kshetriya Gramin Bank Dayalbandh, Bilaspur, District Bilaspur, Mp (Now Cg)
4. Chhattisgarh Kshetriya Gramin Bank, Through Its Chairman Cum Managing Director Chhattisgarh Kshetriya Gramin Bank Near Motilal Petrol Pump Link Road Bilaspur (Cg)

---- **Appellants**

Versus

Ajay Kumar Jain S/o Shri Ayodhya Prasad Jain R/o Behind Digambarn Jain Mandir Station Road Raigarh Distt. Raigarh MP (Now CG)

---- **Respondent**

For Appellants : Shri S.S. Baghel, Advocate on behalf of Shri B.D. Guru, Advocate
 For Respondent : Shri Shashank Thakur, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Judgment On Board**Per Thottathil B. Radhakrishnan, Chief Justice****17/08/2017**

1. This writ appeal is against the judgment by which the learned Single Judge set-aside an order issued by the employer - Gramin Bank removing a Branch Manager from service on allegations of indiscipline in relation to lending and grant of subsidy benefits. As a consequence of

the decision of the learned Single Judge, the delinquent was entitled to reinstatement with no restriction whatsoever even on the component back wages.

2. In this appeal, the employer-Bank contended that the learned Single Judge was unjustified on the facts and materials in interfering with the disciplinary proceedings and that, even if the interference with the disciplinary proceedings were to stand, the order for backwages has been issued as an automatic one, which is against the settled norms governing that field, which has plethora of judicial precedents for guidance.
3. We have heard the learned counsel for the appellant-Bank and the respondent-delinquent.
4. Before we proceed further, there are certain features which we need to notice now and here. The delinquent was removed from service on 26/08/1988 and the writ petition was filed in 1989. He was around 36 years old then. That writ petition was decided on 14/12/2010. As a consequence of the reinstatement, he rejoined duty and worked for four months until he retired on superannuation. Therefore, for all intents and purposes, at this distance of time, what would be of primary practical concern for the parties on both sides would be as to the gain or loss that the delinquent could make by way of back wages or other service benefits on account of the impugned order for reinstatement, unless ofcourse, the interference with the disciplinary proceedings and penalty were not to stand.

5. The learned counsel for the appellant - Bank argued that the findings of the learned Single Judge are unjustified inasmuch as the disciplinary proceedings were carried through an enquiry which satisfied the settled legal norms for domestic enquiry. He pointed out that while the plea of the delinquent is that he was not furnished with the list of witnesses who would tender oral evidence and also the list of documents, the fact of the matter remains that the witnesses who were examined on behalf of the employer were subjected to cross examination by or on behalf of the delinquent and that the documents were available during the course of enquiry and those documents were actually discussed at hearing, as is abundantly reflected by the enquiry report and other materials on records. He further argued that, at any rate, the order for wholesome backwages has been issued without stating any reason whatsoever and that the said decision has, necessarily, to go.
6. Per contra, the learned counsel for the delinquent argued that it is a matter of record that in spite of repeated requests, the delinquent was not offered opportunity of access to the requisite documents including those communications which he had allegedly addressed to the Bank pleading that the disciplinary proceedings are actuated by malice and *mala fides* and are obliquely instrumented as a result of personal bias of superior authorities to whose tunes the delinquent was not prepared to dance in relation to the grant of loan and release of subsidy to the various consumers who deal with the Bank. He further argued that the delinquent was at a formidable stage of his career as a Branch Manager at 35 years of age and there was no reason at all to throw him out of service and thereby set his entire life out of gear.

7. We have gone through the Paper-Book and the entire materials, including the enquiry materials, as are made available during the course of hearing. We have considered the different aspects of the matter in the light of the submissions made, also bearing in mind the career graph of the delinquent as well as the litigation graph until now.
8. The Bank is not unjustified in criticizing the impugned judgment by pleading that it is made by only reiterating the rules of natural justice and other concepts which ought to be inbuilt in domestic and by referring to judicial precedents; without however, referring to the facts of the case in hand and the substantive issues touching the material findings by the Enquiry Officer and the Disciplinary Authority. We say this, quite cautiously, because though different precedents are quoted in the impugned judgment, the factual aspects of the case, which are of critical importance in adjudication, have not been appropriately considered as required in judicial review. It is true that in judicial review of disciplinary proceedings including domestic enquiry, the thrust is on ascertaining whether due procedure has been followed. The assimilation of facts and materials and the justifiability of the enquiry authority's conclusions in that regard may not be a matter for judicial review, leading to interference with the factual aspects and findings unless they are palpably perverse leading to arbitrariness. But, in deciding whether interference is called for in such matters through writ jurisdiction, the writ Court would be well advised to take a wholesome look at the facts, allegations, evidence and material findings. Unlike a Judge discharging the pure and simple traditional judicial function of adjudicating a civil litigation between private parties or conducting a criminal trial, Judges bestowed with functions in writ jurisdiction ought to be live also to the

consequences of the writ, direction or order that may be issued in cases relating to administrative laws, industrial laws, service laws and such other species of litigations which tend to have varied resultant impact. It is contextually profitable to read the illumining Article, '**Rendering of Judgment**' by **Hon'ble Shri Justice R.V. Raveendran**, revered former Judge of the Supreme Court of India, prepared based on lectures delivered at National Judicial Academy, Bhopal: See Law Web - 29 June 2012 - <http://www.lawweb.in>.

9. It is not a fact in dispute that the witnesses who offered evidence were subjected to cross-examination by or on behalf of the delinquent. It is also true that the documents which the employer relied on before the Enquiry Authority were also accessible during the course of enquiry. To that extent, the plea of the delinquent that he was not provided adequate opportunity to participate in the enquiry with the aid of list of witnesses and list of documents, being provided well in advance, does not by itself become a substantially wholesome premise for interference in writ jurisdiction. But, the materials referred to in the enquiry, coupled with the non-furnishing of the list of witnesses and documents, may also tend to indicate that certain choices were made by the employer through the Presenting Officer in the enquiry; as to what are the documents to be presented as against the delinquent. It is here that the delinquent's defense on the basis of his own communications may assume importance. If that were so, we cannot take this as a case where there was no hostile exclusion of relevant materials in the domestic enquiry, which in a way hits the requirement as to due satisfaction of the principle of *audi alteram partem*. We say this because it appears to be the consistent case for the delinquent that he was being victimized since he

was not prepared to accede to certain dictates of his superiors. Therefore, the question whether the domestic enquiry would or would not have been sustained before the learned Single Judge, had there been a deeper adjudication on facts, need not necessarily lead us to the conclusion that the enquiry proceedings deserves to be upheld upsetting the judgment of the learned Single Judge. We emphasize that, at this distant point of time, we adopt this approach in writ appellate jurisdiction taking all relevant factors into consideration, including the age of the delinquent and the span of time that has gone through in prosecuting this litigation, etc. Therefore, we hold that, in writ appellate jurisdiction, we do not find any ground to interfere with the decision of the learned Single Judge, in so far as it has resulted in setting aside the order of dismissal of the delinquent.

10. Proceeding to the question of back wages or compensation, if any, that such a delinquent may be entitled to, we have to bear in mind certain concepts which, by now, are well settled through judicial pronouncements by the Hon'ble Supreme Court of India and different High Courts. We are dealing with the Banking sector. Those institutions deal with public funds. They work on the confidence of the people. The purity of transactions reflected between the consumer and the banker are matters of abundant importance for any such institution. The series of precedents handed down by the Apex Court emphasise that in such sectors, absolute integrity and devotion to duty are inexcusably called for and there ought be zero tolerance to financial embezzlement, corruption, neglect, negligence, nepotism and the like. See: ***Union Bank of India vs. Vishwa Mohan***,¹ ***Regional Manager, UPSRTC v. Hoti Lal***,²

1 (1998) 4 SCC 310

2 (2003) 3 SCC 605

Chairman and MD, United Commercial Bank v. P.C.Kakkar³, **State Bank of India and Others vs. Ramesh Dinkar Punde**,⁴ and **General Manager (Operations) State Bank of India and Another vs. R. Periyasamy**⁵. The learned counsel for the Bank as well as the learned counsel for the delinquent has cited the decisions in **Anil Gilpurker vs. Bilaspur Raipur Kshetriya Gramin Bank and Another**⁶. Different yardsticks were applied in each of those cases to render justice on the facts and in the circumstances of each of those cases. Therefore, it would be inappropriate for us to cull out any *ratio decidendi* that may provide us a standard form percentage on standardized quantum as to compensation or backwages. That question is facts centric, to be decided in every particular case on the basis of the particular factors relevant for that case. Bearing this principle in mind, we see that there was absolutely no material before the learned Single Judge to indicate from the side of the delinquent that he was not gainfully employed after his dismissal from service. Nor is there any such material in this appeal. Taking a cue by way of legislative guidance from content of Section 17 B of the Industrial Disputes Act, 1947, which may not *mutatis mutandis* apply to the case of a Bank Manager, and the judicial precedents elucidating that Section, we ought to envisage, in writ jurisdiction, a projected need for compensation or for appropriate restitutionary back wages that would suffice the demands of justice to be answered in favour of the delinquent. In the case in hand, we see that the litigation, spreading from the order of dismissal handed down in August 1988 has drifted till now. In between, the delinquent worked for four months after the impugned judgment was handed down by the learned Single Judge.

3 (2003) 4 SCC 364

4 (2006) 7 SCC 212

5 (2015) 3 SCC 101

6 (2011) 14 SCC 379

The findings in the domestic enquiry were upset by the learned Single Judge only on the grounds referable to non-following of due procedure as found by the learned single Judge. As already stated herein above, the examination of witnesses including their cross examination and the availability of the documents during the course of the enquiry are matters which militate, to a large extent, against the delinquent. No labour was contributed or could have been contributed by the delinquent to the Appellant's establishment for the entire period after his dismissal till his reinstatement, followed by four months of labour that he contributed till superannuation. The earnings which he could have reasonably expected, had he continued in service, is not something that we would lose sight of. Balancing all requisite factors on the basis of the facts and evidence on record, we are of the view that ends of justice will be satisfied if the delinquent is given an order for back wages pegged at 20% of amount which he would have last drawn as on the date of his dismissal from service. The order of dismissal that was handed down by the employer, having been set-aside by the learned Single Judge and that part of the impugned judgment having been affirmed by us, it is held that the service reckonable to the delinquent's account till his superannuation that followed his reinstatement is eligible to be counted for the purpose of determining his retiral benefits by reckoning the length of service till superannuation for such purpose.

11. In the result :

- (i) The order passed in the writ petition, to the extent it sets aside the order of dismissal of the Respondent from service is confirmed.
- (ii) The direction in the order impugned in this writ appeal for payment of backwages is modified and limited to be one for payment of

20% of the backwages.

(iii) It is further directed that the service reckonable to the Respondent's account till his superannuation that followed his reinstatement on the basis of the impugned judgment shall be counted to reckon the length of service for the purpose of determining his retiral benefits.

(iv) The writ appeal is allowed in part as above.

(v) No costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge