

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4903 OF 1999

ICICI Limited

...Petitioner

Versus

1. T.R. Shetty
a Citizen of India, residing at
Sahajeevan Co-operative Housing
Society, 53/1877 Tilak Nagar,
Chembur, Mumbai 400 089.

2. C.V. Govardhan
Presiding Officer, First Central
Government Industrial tribunal,
having its Court at Sharmraksha
Bhavan, Shivashrushti Road, Eastern
Express Highway, Mumbai.

...Respondents

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Mr. R.S. Pai, with Mr. Anand Pai and Mr. Netaji Gawadhe i/b.
M/s. Sanjay Udeshi and Co. for the Petitioner.
Mr. Neel G. Helekar for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT RESERVED ON: 8th June, 2017

JUDGMENT PRONOUNCED ON: 13th September, 2017

Judgment :-

Challenge in this Writ Petition is to the award dated 9th July, 1999 in Reference No.35 of 1993 whereby the learned Presiding Officer, Central Government, Industrial Tribunal No.1-Mumbai,

directed the Petitioner to reinstate the Respondent No.1 with back wages and continuity in service w.e.f. 1.2.1990.

2. The Petitioner is a Finance Company. The Petitioner had appointed the Respondent No.1 as a Junior Assistant w.e.f. 1.10.1988. After completing the probation period the services of the Respondent No.1 were confirmed w.e.f. 1.4.1989. By letter dated 31.1.1990 the Petitioner terminated the services of the Respondent No.1 on the ground of loss of confidence in view of questionable integrity and loyalty.

3. The Respondent No.1 challenged the termination by filing a complaint (ULP) No.117 of 1990 in the labour court at Mumbai. The labour court held that the appropriate Government in respect of the Finance Company was the Central Government and hence the provisions of M.R.T.U. and P.U.L.P. Act were not applicable and accordingly dismissed the complaint by judgment dated 14.3.1991.

4. The Respondent No.1 therefore raised an industrial dispute. The appropriate Government referred the dispute for adjudication to the Central Government Industrial Tribunal, Mumbai.

5. The Respondent No.1 filed his statement of claim wherein he alleged that the Petitioner had terminated his services without following the due process of law. The Petitioner claimed that his services have been terminated without conducting any enquiry and that his termination is in total violation of principles of natural justice. He further claimed that even if it is assumed that his services were retrenched, the said retrenchment was illegal for want of compliance of the provisions under Section 25 F of the Industrial Disputes Act (hereinafter referred to as "the Act"). The Respondent No.1 therefore claims that the termination of his services was illegal and hence, he is entitled to be reinstated with full backwages.

6. The Petitioner claimed that it is engaged in financial purchase and release of ships, fishing strollers etc. The transactions are extremely confidential. The Petitioner claimed that Premchand, an employee of the Petitioner, had complained that the Respondent No.1 was seen in the office on weekly holidays alongwith some strangers. It was stated that the Respondent No.1 was seen taking photocopies of some documents. The Petitioner suspected that the Respondent No.1 was involved in taking copies of some confidential documents from the

office. The Petitioner also alleged that the Respondent No.1 was involved in submitting inflated vouchers and claiming exorbitant taxi fares. The Petitioner claimed that the Respondent No.1-employee had indulged in objectionable activities, which were against the interest of the Petitioner-company. The Petitioner claimed that the integrity of the Respondent No.1 was questionable and hence, they could no longer repose confidence in him. Hence, by letter dated 31st January, 1990 the Petitioner terminated the services of the Respondent No.1 on the ground of loss of confidence.

7. The Petitioner claimed that it was not possible to conduct an enquiry since such enquiry would adversely affect the long term business relationship with its corporate clients. The Petitioner further sought an opportunity to prove that the Respondent No.1 had indulged in objectionable activities and thereby justify termination of the services of the Respondent No.1.

8. The records reveal that the learned Presiding Officer of the Industrial Tribunal had given an opportunity to the Petitioner to prove the allegations levelled against the Respondent No.1. Accordingly the Respondent No.1 examined four witnesses. The Respondent No.1

examined himself. The learned Presiding Officer, after considering the material produced by the respective parties, held that the allegations of loss of confidence attaches a stigma on the character of the workman and that his services could not be terminated without any enquiry or compliance of Section 25 F of the Industrial Disputes Act. The learned Judge further held that the Petitioner had failed to prove that the conduct of the Respondent No.1 was objectionable or that there was any reason to doubt his integrity and to terminate his services on the ground of loss of confidence. The learned Judge therefore held that the termination was illegal and ordered reinstatement with back wages and continuity of service w.e.f. 1.2.1990. Being aggrieved by this award, the Petitioner has filed the present Petition.

9. Mr. Pai, the learned counsel for the Petitioner has submitted that the learned Judge has traversed beyond the terms of reference. He has submitted that the services of the Respondent No.1 were terminated for loss of confidence. Such termination does not amount to retrenchment within the meaning of Section 2 (oo) of the Industrial Disputes Act and hence, the termination was not vitiated for non compliance of Section 25 F of the Industrial Disputes Act.

10. Mr. Pai the learned counsel for the Petitioner has further submitted that the Petitioner could not hold an enquiry as it would jeopardise the business relations with its clients. Nevertheless, the Petitioner had justified the termination before the Tribunal. The objectionable conduct of the Respondent No.1 as proved by the Petitioner before the Tribunal justified termination on the ground of loss of confidence. He, therefore, claims that the learned Judge has erred in ordering reinstatement of the Respondent No.1. The learned counsel for the Petitioner has further submitted that the Respondent No.1 has not stated that he was unemployed since the date of his termination. On the contrary he has admitted in his evidence that he has been doing accounting work of two companies. In the light of the said admission, the learned Judge was not justified in ordering payment of full backwages.

11. He has relied upon *Kamal Kishor Lakshman V/s. The Management of M/s. Pan Americal World Airways and Ors.* 1987 (1) LLJ 107 SC, *West Coast Paper Mills Employees' Union, Bombay V/s. A.B.M. Shaikh & Ors.* 1999 1 CLR 759, *Bharat Heavy Electricals Ltd. Vs. Chandrasekhar Reddy and Ors.* (2005) 2 SCC 481, *Telegraph Dept. V/s. Santosh Kumar Seal* (2010) 6 SCC 773,

Haryan State Electronics Dept. Corporation Ltd. V/s. Mamni (2006) 9 SCC 4343, General Secretary, Coal Washeries Workers Union, Dhanbad Vs. Employers in relation to the Management of Dugda Washery of M/s. BCCL, 2016 III CLR 737 SCC, Hotel Horizon (Pvt) Ltd. Vs. Bhartiya Kamgar Karmachari Mahasangh and Another 2002 (1) LLJ 216.

12. Mr. Neel Helekar, the learned counsel for the Respondent has refuted that the Judge has traversed beyond the scope of the reference. He has submitted that Sub Section 4 of Section 10 of the Industrial Disputes Act empowers the Tribunal to adjudicate not only the dispute referred to it but it also empowers it to adjudicate all the powers and matters which are incidental thereto. He therefore, claims that there is no illegality or irregularity in the proceedings.

13. Mr. Neel Helekar, the learned counsel for the Respondent further claims that the termination was stigmatic and was in violation of the principles of natural justice. He further claims that even before the Tribunal, the Petitioner has not been able to justify the termination of the Respondent No.1 on the ground of loss of confidence. He further claims that the termination is only on the basis of suspicion.

He therefore, claims that the learned Judge was perfectly justified in ordering reinstatement with back wages and continuity of service.

14. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

15. At the outset it may be mentioned that the learned Judge has held that the termination is illegal for want of compliance of Section 25 F of the Act. It is to be noted that the restrictions imposed on the employer under Section 25 F of the Act are applicable only in the case of retrenchment. The term "retrenchment" as defined under Section 2(oo) of the Act excludes termination of service by way of punishment and the other exceptions stated in clauses (a) to (c) of Section 2 (oo) of the Act. In the instant case the services of the Respondent No.1 were terminated on the ground of loss of confidence. In ***Chandu Lal Vs. Management of Pan America World, AIR 1985 SC 1128***, the Apex Court has held :-

" 7. It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected

standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the management that termination for loss of confidence does not amount to a stigma has to be repelled. In our opinion it is not necessary to support our conclusion by reference to precedents or textual opinion as a common-sense assessment of the matter is sufficient to dispose of this aspect. 'Retrenchment' is defined in Section 2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained."

16. In ***Kamal Kishore Laxman*** (supra) the Apex Court while reiterating the said principles has held that loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employer and therefore amounts to a stigma.

17. Reverting to the case in hand, the services of the Respondent No.1 were terminated by letter dated 13.1.1990. By the said letter the Respondent No.1 was informed that "the Management of the company has been watching your performance continuously and

find that you have completely lost our trust and confidence". The said letter indicates that the services of the Respondent no.1 were summarily discharged for loss of confidence. The said termination letter does not spell out the incident or the activities of Respondent No.1, which led to the loss of confidence. Nevertheless in the statement filed before the Tribunal the Petitioner had averred that the Respondent No.1 had violated the terms and conditions of fidelity cum secrecy declaration signed by him at the time of the appointment. It was alleged that Respondent No.1 was found entertaining some strangers and attending the office on weekly holidays. The Petitioner Bank had also averred that the Respondent No.1 had surreptitiously taken photocopies of confidential documents viz. final draft of a lease agreement, which was to be executed between the Petitioner-Bank and one of its clients. It was alleged that the said confidential document was found on the file of another client even before the execution of the said document. The Petitioner Bank had also alleged that the Respondent No.1 had usurped an amount of Rs.6,000/- alleging to be taxi fares. He had stopped maintaining log book wherein he was required to note his outdoor work. The Petitioner claimed that all the above actions clearly indicated that the Respondent No.1 was a person with a very questionable integrity and loyalty.

18. The aforesaid allegations are nothing short of casting aspersions on the character, reputation and integrity of the Respondent No.1. The termination was not simplicitor discharge of services but was stigmatic and punitive. Hence, the termination of services of the respondent no.1 was not "retrenchment" within the meaning of Section 2(oo) of the Act.

19. The services of the respondent no.1 were sought to be terminated on grounds which were stigmatic, affecting his character and reputation. Needless to state that the action of infliction of punishment by way of termination of service had to be necessarily preceded by disciplinary proceedings, which in the instant case was admittedly not done. In ***Kamal Kishor*** (supra) the Apex Court has held that -"*If disciplinary enquiry has not preceded the prejudicial order in the case of a Governemnt servant the action would be bad while in the case of a workman the order could be justified even in the case of adjudication before appropriate tribunal under the Industrial Disputes Act even though no enquiry had been undertaken earlier.*"

20. It is not in dispute that, the Petitioner had sought an

opportunity before the Tribunal to adduce evidence to justify the termination of services of the Respondent No.1. The Tribunal had in fact given such an opportunity and accordingly, the Petitioner had examined three witnesses to substantiate the charges levelled against the Respondent No.1 viz. attending the office on holidays, taking photocopies of confidential documents, submitting inflated taxi bills.

21. MW1- S. Parthsarathi, who was the Executive Director of the Petitioner-Bank, had produced the confidential report dated 18.12.1989 (Exh.-E) submitted by him to the Managing Director, N.S. Singhal regarding the questionable and suspicious activities of the Respondent No.1. In his evidence before the Tribunal as well as in the confidential report at Exhibit-E, MW1- S. Parthsarathi had alleged that the Respondent No.1 was seen entertaining strangers in the office on weekly holidays. The Respondent No.1 had also taken photocopies of important documents. He has deposed that the Respondent No.1 had easy access to the important and confidential documents involving major corporate clients and that it would be risky to continue him in service.

22. The evidence of this witness indicates that he had no

personal knowledge about the objectionable conduct of the Respondent No.1 and that the confidential report submitted by him to the Executive Director was based on the report of Premchand as well as Yogesh Shah. He claims that said Premchand and Yogesh Shah are loyal, upright and sincere employees and that there are no reasons to disbelieve the reports submitted by them. MW1-S. Parthsarathi has stated in his cross examination that Premchand had told him that the Respondent No.1 had taken photocopy of one document and further that he had seized the said copy from the possession of the Respondent No.1.

23. MW2- Yogesh Shah has claimed that the Respondent No.1 was seen indulging in objectionable activities prejudicial to the interest of the Petitioner. He claims that on 9.12.1989 at about 8.30 a.m. Premchand had seen the Respondent No.1 entertaining some strangers in the Office. Said Premchand had also seen the Respondent No.1 taking photocopies of some important confidential documents of the Petitioner. He had submitted a report at Exhibit E-1 to the Executive Director-MW1-S. PARthasarthi. In the said report dated 12.12.1989 MW3 Y.S. Shah had stated that the Law Officer Sudhendranath had mentioned that one draft lease agreement which was to be signed with

S.R. Shipping was identical to the lease agreement signed with GESCO. MW3 Y.S. Shah further stated that when he had enquired about the said matter, Premchand had informed him that he had seen the Respondent No.1 taking copies of some document. MW2 therefore, suspected that the Respondent No.1 had taken the copy of the lease agreement. In his cross-examination, he has stated that he had no personal knowledge about the said objectionable activities of the Respondent.

24. The evidence of MW1- S. Parthsarathi and MW2-Yogesh clearly indicates that they had no personal knowledge about the said objectionable conduct of the Respondent No.1 and that they had levelled serious allegations against the Respondent No.1 solely on the basis of the information given by the co-employee Premchand. It is therefore necessary to consider the evidence of MW3-Premchand, who had stated in his affidavit in evidence that he had seen the Respondent No.1 taking photo copies of certain documents of the Company. In his cross examination he has stated that the Respondent No.1 had told him that he was taking photocopies of some school certificate of his child. He has stated that he did not go near the Respondent No.1 to check the document, which was being photocopied. He has stated that he had

neither verified nor seized the said photocopies. He had stated that his statement that the Respondent No.1 was seen taking photocopies of the documents of the Company was merely a suspicion. Thus the very foundation of the report and the consequent termination was based on suspicion.

25. It is also to be noted that the management witnesses have admitted that there was no segregation of confidential files and the other regular files. They have stated that the files were kept in open racks in a separate room. Apart from the Respondent No.1 some other staff members also had keys of the said room and that they used to open the room in the absence of the Respondent No.1 and that the other staff members also had access to the said room. The evidence of these witnesses does not indicate that the Respondent No.1 was in exclusive charge of confidential files.

26. The evidence of MW2-Yogesh Shah reveals that the employees as well as some officers used to work on Saturdays in view of heavy work load. MW3-Premchand has stated that the Respondent No.1 had told him that the person, who had accompanied him was his friend. He has admitted that very often the friends of the members of

the staff used to visit the office premises of the Petitioner. In the light of the above evidence, the fact that the Respondent No.1 had attended the office on weekly off days or that he had come to the office with some strangers would also not per se be a ground to cast aspersions on his integrity. It is also pertinent to note that though the Petitioner had alleged that the Respondent No.1 had submitted inflated bills, there is absolutely no material to substantiate the said charge.

27. It is a trite proposition of law that in departmental proceedings facts constituting misconduct are not required to be proved beyond reasonable doubt but have to be established on the basis of preponderance of probabilities. Nevertheless, finding of guilt can never be based on surmises, conjectures and mere suspicion. In the instant case there is absolutely no material on record to indicate that the Respondent No.1 had indulged in any such activities, which were prejudicial to the interest of the Petitioner. The services of the Respondent No.1 were terminated solely on the basis of suspicion. The learned Judge has considered all these aspects and has rightly held that the misconduct was not proved and the termination was illegal and not justified. There is also no merit in the contention that the learned Judge has traversed beyond the reference. The findings of the learned

Judge are based on evidence on record and do not warrant any interference.

28. Generally quashing of the order of termination would result in reinstatement with full backwages except in exceptional and suitable cases, where it is not expedient to grant a relief of reinstatement. In the instant case more than 27 years have lapsed since the date of termination of the services of the Respondent No.1. It is submitted that during the pendency of this Petition, the Respondent No.1 has already attained the age of superannuation. Under such circumstances, the order of reinstatement has rendered infructuous.

29. As regards grant of full backwages from the date of termination, till the date of suspension, the quantum of compensation, the records reveal that the Respondent No.1 was appointed as a Junior Assistant w.e.f. 1.10.1988. He was confirmed w.e.f. 1.4.1989 and his services were terminated on 31.1.1990. It is thus evident that the Respondent No.1 was in service barely for a period 1 year and three months. The Respondent No.1 had been out of service for last over 27 years. The Respondent No.1 has not averred that he was not gainfully employed from the date of his termination. On the contrary, he has

admitted in his cross examination that he has been writing accounts of two companies. He has stated that he has been maintaining accounts of a firm-Rajendra Chemicals situated at Masjid Bunder. He has also admitted that he has been writing accounts of National Health Leage, Opp. Capital Cinema. He has stated that these companies used to make payment in cash. He has further stated that the said amount was paid to him through his friend. He has stated that he does not recollect the total amount paid to him by the said companies. The evidence of this witness clearly indicates that he was gainfully employed during the interregnum period. Under such circumstances, the Respondent no.1 is not entitled for full back wages and the ends of justice would be met by grant of reasonable compensation.

30. As regards the quantum of compensation, the records indicate that by order dated 17.12.1999 in LPA 349 of 1999 filed by the Respondent No.1 against the Petitioner, this Court while admitting the LPA had directed the Respondent No.1 to deposit an amount of Rs.10,000/- p.m. during the pendency of the writ petition. The learned counsels for the Petitioner and the Respondent No.1 have stated that till June-2017 i.e. the date of superannuation, the Petitioner has been paid amount of Rs.2,156,677.00 at the rate of Rs.10,000/-

per month. Considering the above fact, so also the length of service as well as gainful employment of Respondent No.1 during the interregnum period, in my considered view Rs.10,00,000/- would be just and fair compensation which would be inclusive of full backwages and other consequential benefits. Hence, the following order :-

a) The impugned award to the extent of the order of reinstatement with continuity in service and full backwages is hereby quashed and set aside. In lieu, the Petitioner is directed to pay to the Respondent No.1 compensation of Rs.10,00,000/- within a period of two months from the date of this order.

31. The Writ Petition stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)