

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 8th December, 2017

Pronounced on: 14th December, 2017

+ W.P.(C) 9341/2004 & CM APP Nos.8330/2004, 1972/2005 and
6726/2014

VIJAYA BANK

..... Petitioner

Through: Mr. Rajesh Kumar with Mr.V.
G. Ramanan and Mr.G. K.
Singh, Advs.

versus

ISH KUMAR PRUTHI & ANR.

..... Respondents

Through: Mr.Siddharth Dutta, Mr.Kumar
Dushyant Singh and Mr.Mukul
Lather, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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1 This writ petition challenges an Award, dated 18th March 2004, passed by the learned Industrial Tribunal-cum-Labour Court, New Delhi (hereinafter referred to “the learned Tribunal”), whereby and whereunder the dismissal, by the petitioner-Bank, of the services of the respondent-workman, has been quashed, and the respondent has been directed to be reinstated with continuity of service, full back wages and all other consequential benefits.

2 The respondent, while serving as clerk with the petitioner-Bank, was issued a charge sheet, dated 1st August, 1992, proposing initiation of disciplinary action against him, for having allegedly committed “gross misconduct” within the meaning of clause 19.5 (j) of Chapter XIX of the Bipartite Settlement, 1966, which, admittedly governed the relationship between the Bank and its employees, and directing the respondent to show cause thereagainst. The allegations in the said charge sheet are reproduced, *in extenso* as under:-

“It is reported against you that you were in the habit of late reporting for duty at the branch and leaving the office early without completing the allotted work, despite being refused permission to do so by the controlling authority. On such occasions when questioned by Sri M.K. Haridas, the Branch Manager, you became furious and behaved in an unruly, unsatisfactory, disorderly and riotous manner on the premises of the branch. Particulars of such instances are furnished below:

1) On 3.4.1991, you left the office early i.e. at 4.00 P.M. without completing the allotted work even though your request for permission was not considered by the Branch Manager. When the Branch Manager instructed you to complete the work, you refused and said that it would be completed next day only and you were prepared for any action that would be taken on this count.

2) On 10.10.1991 you returned to the office after lunch break at 4 P.M. only. When the Branch Manager questioned about your late coming, you spoke to him in an insulting manner in the presence of staff members and also attempted to hit the Branch Manager with telephone receiver. You also banged on the table with your hands and also with the books lying on the table and questioned the authority of the Branch Manager under which he called upon explain you the reasons for your late coming after lunch recess. Further, when the Branch Manager addressed a letter dated 12.10.1991 calling for explanation from you for the incident of 10.10.1991 you refused to accept the letter and stated that it should be withdrawn otherwise the Branch Manager face dire consequences.

3) On 1.4.1992 when you were about to leave the office at about 4 P.M. without permission and keeping the allotted year end work

pending and when the Branch Manager questioned your action, you abruptly entered into the Branch Managers cabin in a furious mood and questioned him saying whether the bank belonged to the manager's father, thereby exhibited audacity and depravity towards your superior. Thereafter you left the branch at about 4.10 P.M. despite being refused permission by the Branch Manager.

4) You were also in the habit of remaining absent unauthorisedly without getting prior permission/obtaining sanction of leave by submitting leave application in accordance with the leave rules of the bank, the details of which are given below:

From	To
2.4.1992	10.4.1992
18.4.1992	2.5.1992
6.5.1992	29.5.1992
1.6.1992	17.6.1992

When you had reported for duty on 15.6.1992, the Branch Manager having come to know that you had not submitting leave application for your absence, called you into the cabin and instructed you to submit the leave applications for the relevant periods alongwith necessary medical certificates immediately. But you refused to do so and stated that it would be done after the lunch break. Thereafter you left the branch premises at about 2 P.M. and did not return to the branch for the rest of the day. Therefore, the Branch Manager addressed a letter dated 19.6.1992 informed you about your absence and the incident of 25.6.1992. But you refused to accept the said letter on 20.6.1992.

5) Again on 24.6.1992 you left the branch at about 2 P.M. without obtaining Branch Manager's permission and completing the allotted work and did not return to the Branch for the rest of the day. Hence, the Branch Manager addressed a letter dated 24.6.1992 informing you about your unauthorisedly leaving the office at 2 P.M. You not only refused to accept the said letter on 25.6.92 but also questioned the authority of the Branch Manager and also started abusing the Branch Manager in most vulgar, abusive and defamatory language saying 'Kutta, ***** and *****' (deleted in the interests of propriety, being a vulgar expletive). You also called the Branch manager to come out of his cabin and attempted to hit him, but you were over powered by Mohinder Singh, the Armed Guard of the Branch. However, on 25.6.1992, you took the letter dated

24.6.1992 without acknowledging it in the delivery book and later destroyed it in the presence of Sri Gowda and Sri Mittal, staff of the branch. In view of your above action, the copies of letters dated 19.6.1992 and 24.6.1992 were displayed on the notice Board. When you came to know that those letters were displayed on the notice board, you came out of the cash cabin and removed them from the notice board unauthorisedly.

6) It is alleged against you that on 30.6.1992 you followed Sri M.K. Haridas the Branch Manager, on your scooter while he was going home for lunch and kept tracking him till he reached a sub-lane and attempted to dash him with your scooter and also blocked the way. Thereafter when Branch Manager came back to the office after lunch, you rushed into his cabin at about 3 P.M. and occupied chair in front of the Manager's seat on the pretext of telephoning. When the Branch Manager objected to as permission had not be obtained, you stated that it was not the property belonging to the managers father and started abusing; using words like "Kutta, Harami". Further when the Branch Manger questioned why you had obstructed his path on the way home, you rose and hit the manager with the telephone receiver on his head with the result the telephone receiver was broken. You are started hurling the objects which were lying on the table, like paper weight, pin box, pen stand, etc., towards the Branch Manager. The Branch Manager while trying to avoid being hit by the objects, you started hitting him by holding his shirt collar causing injury on the left arm of the Branch Manager. In the meanwhile, Sri Mohinder Singh, the Armed Guard entered the cabin and caught hold of you with one hand as he was holding the gun in the other hand, You even tried to snatch the gun from the armed guard but was overpowered by him and taken out of the cabin. However, again you tried to re-enter the cabin from the other door but was prevented by Mr. Rajendra Kumar, a neighbouring shop keeper and other staff members of the branch. Even after that you attempted to hurl a lunch box lying on the counter towards the Branch Manager. You also threatened the life of the Branch Manager and swore that the matter would be taken care outside and the manager would not be permitted to stay in Rohtak.

Thus, your above acts such as reporting late to the office/leaving the office early without the permission of the controlling authority, remaining absent unauthorisedly without obtaining sanction of leave in terms of leave rules of the bank, refusing to accept the official communications meant for you, behaving in an unruly, riotous and

disorderly manner on the premises of the bank and hitting the Branch Manager with telephone receiver thereby causing injury to him amount to misconduct in terms of provisions of the Bipartite Settlement, 1966.”

3 On receiving the abovementioned charge sheet, the respondent-workman addressed a representation, dated 12th September 1992, to the petitioner-Bank, requesting for permission to examine the relevant records, on the basis of which the charges against him had been framed and for supply of photocopies thereof to enable him to submit his statement of defence thereto.

4 The petitioner-Bank responded, *vide* communication dated 25th August, 1992, stating that the charge sheet issued to the respondent clearly set out the incidents, dates, time and place, relating to the charges levelled against him, and that these were sufficient to make the respondent understand its basis and to think of his line of his defence. As such, it was stated that the question of allowing him to peruse/examine the relevant records and of supply of copies thereof, at that stage, did not arise. The communication went to state, however, that copies of the relevant records, on the basis of which the allegations/charges had been leveled against him, would be made available to the respondent, and all reasonable opportunities would be given to him, to examine the same, “at the appropriate time”. The respondent, was, therefore, advised to submit his statement of defence within three days of receipt of the said communication.

5 The respondent apparently addressed a second representation, dated 7th September 1992, to the petitioner bank, requesting the petitioner to reexamine the matter on merits, and allow an opportunity, to the respondent to peruse/examine the relevant records and documents and to be supplied copies thereof.

6 Predictably, this second communication, dated 7th September 1992, also met with the same fate as the earlier representation dated 12th August 1992. *Vide* a communication dated 29th September 1992, addressed to the respondent, the Bank reiterated its stand that the charge sheet issued to the respondent was sufficiently explicit regarding his lapses and was enough to enable him to “think up a line of defence.” The request for being allowed perusal/examination of the relevant record and documents, it was reiterated, did not arise at that stage, but would be made available to him sufficiently in advance of commencement of a regular departmental enquiry so that he could prepare his defence effectively.

7 No written statement or defence was, in the circumstances, filed by the respondent.

8 On 18th November 1992, an Inquiry Officer (hereinafter referred to as “IO”) was appointed to enquire into the charges against the respondent-workman.

9 The first hearing in the inquiry was fixed on 14th May 1993. However, as notice had not been served on the respondent for the said date, the proceedings were adjourned to 26th May, 1993.

10 On 26th May 1993, the respondent presented himself during the hearing and submitted that he had not been given any copy of the charge sheet dated 1st August 1992. Accordingly, a copy of the said charge sheet, along with some other documents, were handed over to the respondent. The inquiry proceedings were adjourned to 7th June 1993.

11 The proceedings were, thereafter, adjourned from 7th June 1993 to 7th July 1993, and, thereafter, to 20th July 1993. On 20th July 1993, as the respondent was not present, the IO deferred the sitting till 1.30 PM on the same day. At 1.30 PM, it was observed that the notice sent to the respondent-workman through special messenger had been returned undelivered, as he was not present at his residence. The IO, thereupon, asked the Presenting Officer (hereinafter referred to as "PO") to summon his first witness for examination and to tender the listed documents. Documents were submitted by the PO and exhibited by the IO. The inquiry proceedings were continued after lunch. MW-1 Ramlal and MW-2 S.P.Kahtpalia were examined, and the inquiry was, thereafter, adjourned to 21st July 1993.

12 On 21st July 1993, MW-3 Hari Dass, MW-4 Mahinder Singh, MW-5 Gajraj Singh and MW-6 Vinod were examined. Thereafter, the

Management's evidence (hereinafter referred to as "ME") was closed and the proceedings were concluded. 15 days time was sought by the PO to submit his brief, which was allowed by the IO. The proceedings were adjourned to 5th August, 1993.

13 On a request made by the respondent-workman, the IO, acting under directions of the disciplinary authority (hereinafter referred to as "DA") reopened the inquiry proceedings, *vide* a communication dated 5th August 1993 addressed to the respondent, and allowed the respondent to cross examine the Management's witnesses (hereinafter referred to as "MWs") and to produce witnesses/documents, if any, in his defence, on 19th August, 1993 at 11AM .

14 The inquiry proceedings held on 19th August 1993 and 20th August 1993 are of considerable significance in the present matter. The respondent was represented in the said proceedings by a Defence Representative (hereinafter referred to as "DR"). On 19th August 1993, the DR requested, at the outset, for being provided all exhibited documents to prepare his defence. The following documents were, thereupon, handed by the PO to the DR, on instructions of the IO (as set out in the record of proceedings of that date):

- “(i) Investigating report dated 11.7.92 of Sh. A. Vinod Marked as ME-2.
- (ii) Copy of the Charge Sheet No.PER:IRD:CS:67:92 dated 1.8.92 issued to Sh. Ish Kumar Pruthi which was given to the CSE on 7.6.93 which is marked as ME-1.
- (iii) The Statement submitted by Mr. M.K. Haridas the then Branch Manager to the investigating Officer Marked as ME-3.

- (iv) Statement submitted by CSE to the investigating Officer marked as ME-4.
- (v) For numbers Photographs of BH's Cabin.
- (vi) Copy of the Attendance Register of June and July 92."

15 The DR, thereupon, requested for being provided the Annexures of ME, which included as many as thirteen statements of various witnesses cited by the management of the petitioner.

16 It is clear, therefore, that the number of documents handed over, to the DR of the respondent during the proceedings on 19th August 1993, were substantial. Even so, the IO initially granted only one hour's time to the DR to go through the said documents and, thereafter, on the insistence of the DR granted time, to him, till the next day, fixing the next hearing at 9.30AM on the said date i.e, 20th August 1993.

17 On 20th August 1993, the respondent submitted, at the very commencement of proceedings at 10 AM, that the DR was not in a position to attend the proceedings, as his child was unwell, and that he had received the said information, thereof telephonically at about 8.30 PM on the previous day. He submitted that his DR had nevertheless, assured that he would make all possible arrangements to be present before the commencement of inquiry proceedings. Considering these facts, the IO adjourned the session by two hours, "to provide an opportunity for the DR to come from Rohtak".

18 The proceedings were resumed at 12.30PM. The DR had still not arrived, and the respondent handed over a letter, written by the DR intimating his inability to be present in the proceedings. The PO objected, stating that all the MWs had come and that the respondent could, if he so chose, just cross-examine them. The IO, thereupon directed the respondent to cross-examine the MWs, on which the respondent submitted that he was unaware of the proceedings of cross-examination. Accordingly, the respondent requested that another date be fixed, for him to be able to cross-examine the MWs. The IO, thereupon, stated that if the respondent was unable to cross-examine the MWs, he could take the assistance of any of his colleagues in the branch, further stating that no further adjournment would be allowed for the said purpose. The workman, thereupon, reiterated his request for an adjournment, pointing out that his DR was unable to come as his child was unwell. Request and repartee continued, for some time, in this manner, where-after the workman agreed to change his DR and requested for another date. The IO refused to accede to the request and pronounced that, as the respondent was not interested in cross-examining the MWs, the PO was requested to produce any other witnesses/ documents. The PO stated that he did not desire to do so, whereupon the proceedings were concluded and the PO was requested to submit his brief within 15 days.

19 The IO, thereafter, submitted his inquiry report dated 22nd November, 1993, containing the following findings.

- “(i) Charge No.1 is proved as discussed in Para No.9 which constitutes minor misconduct under sub-clause (b) of clause 19.7 of chapter XIX of the Bipartite Settlement 1966.
- (ii) Charge No.2 is proved as discussed in para 10 in respect of unauthorised absence from 1/6/92 to 17/6/92. However, no evidence were produced to prove the unauthorized absence of the CSE from 2/4/92 to 10/4/92, 18/4/92 to 2/5/92 and 6/5/92 to 29/5/92.
- (iii) Charge No.3 in respect of refusal of the CSE to receive official communications, which amounts to willful insubordination and disobedience of lawful and reasonable orders of his official superiors has been proved. But, no evidence were produced to show that the CSE did not complete the allotted work vide para 11.
- (iv) Charge No.4 is proved as discussed in para 12 which constitutes gross misconduct under sub-clause (e) of clause 19.5 of Chapter XIX of the Bipartite Settlement 1966.
- (v) Charge No.5 is proved as discussed in para 13 which constitutes gross misconduct under sub-clause (j) of clause 19.5 o Chapter XIX of the Bipartite Settlement 1966.”

20 The above findings, of the IO, were accepted by the DA, who proposed, on the basis thereof, imposition, on the respondent, of the penalty of dismissal from service with immediate effect and communicated the said decision, along with the copy of the Inquiry Report, to the respondent, calling for his response thereto. The respondent-workman submitted a representation, to the effect that, the proceedings against him, had been conducted in violation of the principles of natural justice. He was given a hearing, by the DA, on 23rd August 1994, on which occasion the said submission was reiterated.

21 Ultimately, the DA imposed, on the respondent, the penalty of dismissal from service with immediate effect, with an order dated 9th September 1994.

22 The respondent contested the said punishment, by raising an industrial dispute, which was referred, by the Central Government Industrial Tribunal, Chandigarh under Section 10 of the Act which was subsequently, transferred to the learned Central Government Tribunal, Delhi (hereinafter referred to as “the learned Tribunal”) with a letter dated 11th/12th August 1997. The term of reference, as drawn up by the Central Government while referring the matter read thus:

“Whether the action of the management of Vijaya Bank New Delhi in dismissing Shri Ish Kumar Pruthi, clerk of Vijaya bank, Rohtak Branch, is legal and justified? If not, to what relief the said Workman is entitled and from what date?”

23 Statement of Claim was filed by the respondent before the learned Tribunal, on 8th September, 1997 praying for setting aside of the order dismissing him from service and, consequently seeking his reinstatement with back wages. The petitioner filed his written statement in response thereto. The respondent filed his rejoinder thereto.

24 On the basis of the pleadings of the parties, the following issues were framed:

- “1. Whether the domestic enquiry conducted against the workman is fair and proper?
2. As in the term of reference?”

25 After setting out, in detail, the specifics of the inquiry proceedings that had taken place, the learned Tribunal decided issue No.1 in favour of the respondent, holding that the inquiry proceedings were vitiated on account of violation of the principles of natural justice. The findings of the learned Tribunal, on this issue as contained in paras 9 and 10 of the impugned Award may be reproduced as under:

“9. ... Thereafter, the E.O. gave his enquiry report on 22.11.93. Ultimately the punishment order of dismissal was passed. After perusal of the enquiry proceedings, I find that the E.O. did not allow proper and better opportunity to the workman/ CSE to cross-examine the witness and produce his defence evidence. Documents were also not provided to him well before time despite repeated requests. The E.O. did not allow adjournment on the request of the CSE and even if the proceedings were adjourned it was either for the same day or the next day. It shows that the E.O. as not acting properly, legally and in accordance with the principles of natural justice. Although the E.O. has allowed 15 days and 10 days time twice to the P.O. to submit his brief but he did not allow such a long time to the E.O. at any time for the reasons best known to the E.O. It is also worth to be mentioned that despite directions of the disciplinary authority the enquiry proceedings were again concluded within 2 days only on 20.8.93 although enquiry report was given on 22.11.93 i.e., after expiry of more than 3 months from the date of conclusion of the enquiry. It also shows that despite consuming sufficient time in giving his enquiry report the enquiry officer did not allow sufficient time to the CSE to participate in the enquiry, cross-examine the management's witnesses and adduce his own evidence. Copy of the enquiry report was also not given to the workman.

10. In view of the above discussions, I find that the enquiry proceedings were not conducted fairly and properly. The E.O. seems to have been biased from very beginning. He never allowed proper and sufficient time and opportunity to the CSE to participate in the enquiry proceedings and for cross-examination of the management's witnesses and adduce his own defence evidence which was clearly against the principles of natural justice and has resulted into miscarriage of justice and caused prejudice to the CSE. It has

therefore vitiated the enquiry proceedings. The Disciplinary Authority and the Appellate Authority did not consider this fact. Hence, the enquiry proceedings cannot be justified. Issue No.1 is, therefore, decided in negative.”

26 Even though the issue of the manner in which the inquiry proceedings had been conducted, were thus decided by the learned Tribunal, against the petitioner and in favour of the respondent, the petitioner still had the right to lead evidence, before the learned Tribunal, to establish that the alleged misconduct had, in fact, been committed by the respondent-workman, as held in, *inter alia*, ***Karnataka State Road Transport Corporation v Lakshmiddevamma, (2001) 5 SCC 433.***

27 The learned Tribunal, however, did not extend, to the petitioner-Bank, the said opportunity, on the ground that no request had been made by it, therefor. Para 11 of the impugned Award which, so holds, is reproduced as under:

“It is worth to be mentioned that no request has been made by the management to adduce any evidence in support of the charges leveled against the CSE in case the Issue No.1 is decided in negative. Therefore, I find no jurisdiction to give any opportunity to the management to adduce any more evidence to prove charges against the workman.”

28 Proceeding from the above findings, the learned Tribunal held that the evidence on record, relied upon by the IO who held against the respondent-workman, could not be relied upon, in view of the fact that the proceedings against the workman were vitiated for non compliance of the principles of natural justice. In these circumstances, the learned

Tribunal opined that the findings of the IO were liable to be categorized as perverse and based on surmises and conjunctures. Resultantly, it was held that the order of punishment passed against the respondent-workman, was baseless, not having been preceded by a valid and proper legal inquiry. The learned Tribunal, therefore, quashed the said order and directed reinstatement of the respondent workman in service with continuity of service, full back wages and all other consequential benefits.

29 The petitioner Bank has filed the present writ petition before this Court, challenging the impugned Award dated 18th March 2004.

30 I have heard Mr. Rajesh Kumar, learned counsel appearing for the petitioner-Bank and Mr. Siddharth Dutta, learned counsel appearing for the respondent-workman, and have bestowed my anxious consideration to the material on record, and the submissions advanced at the Bar.

31 Mr. Rajesh Kumar, appearing for the petitioner-Bank, submitted that the inquiry proceedings, against the respondent, had been conducted in due compliance with the principles of natural justice and that more than sufficient opportunity had been given to him. He drew my attention to the fact that, on 20th August 1993, the respondent had first sought an adjournment on the ground that his DR's child was not well, stating that he had received information, in this regard, the previous evening. When, however, the matter was taken up two hours

later, it was pointed out that the respondent had mysteriously produced a letter, written by his DR, expressing his inability to attend the proceedings. Mr. Rajesh Kumar seriously questioned the possibility of such a letter having materialized, within two hours between the first and second sittings of the IO, and sought to raise a presumption that the letter was fabricated, and that the entire story of illness of the DR's child was false.

32 He further relied on para E in the counter affidavit filed by the respondent workman, in which there is an averment to the effect that the letter of the DR, had been handed over to him, by the DR at 8.30 PM on 19th August 1993. Mr. Rajesh Kumar, submitted that, had the said letter been received by respondent workmen at 8.30PM on 19th August 1993, as stated in the counter affidavit filed before this Court, there was no explanation as to why he did not produce the said letter when the proceedings commenced before the IO on 20th August 1993, and produced it only at 11AM. This, too in his submission, indicates that the adjournment, on 20th August 1993, had been sought by the respondent by concealing facts. He, therefore, submits that the IO was wholly justified in rejecting the said request and in concluding the proceedings on the said date.

33 Mr. Rajesh Kumar has also sought to submit that, in the counter affidavit filed before this Court, the respondent was misstating facts and, in this connection, he draws my attention to the statement, in sub para (e) of para 4 of the counter affidavit, in which it is stated that

“respondent no.1 requested for a short date for a day or two and also apprised the inquiry officer that his DR will definitely come within one or two days”. Mr. Rajesh Kumar points out that there was no such assurance given to the IO, by the respondent, on 20th August 1993, as the record of the proceedings held on that date would clearly show. In fine, on the issue of grant of adequate opportunity to the respondent, Mr. Rajesh Kumar points out that the respondent had been given six adjournments in the inquiry proceedings and that, therefore, the IO was entirely justified in refusing any further adjournment on 20th August 1993.

34 Without prejudice to the said submission, Mr. Rajesh Kumar asserts that the learned Tribunal was unjustified in not extending, to his client, the opportunity to prove the charges against the respondent-workman, merely for the reason that no request, to that effect, had been made. He submits that the mandate of law is that, once the inquiry is held to have been invalidly conducted, the Labour Court/Industrial Tribunal is required, necessarily to afford an opportunity to the Management to prove the charges against the workman by leading evidence, whether the request in that regard, is made by the Management or not. As such, he submits that the learned Tribunal erred in not extending the said opportunity to his client simply because his client may defaulted in making a request to that effect. Finally, Mr. Rajesh Kumar submits that, charges against the respondent-workman being undisputedly serious, he should be allowed,

even at this stage, an opportunity to prove, before the learned Tribunal the charges against the respondent-workman.

35 Mr. Rajesh Kumar relied on following decisions in support of his submissions:

Chairman-Cum-Managing Director, Coal India Limited v. Ananta Saha, (2011) 5 SCC 142, S.C; Girotra v. United Commercial Bank (Uco Bank), (1995) Supp (3) SCC 212, Tata Oil Mills Co. Ltd. v. Workmen AIR 1965 SCC 155; Rajender Kumar Dixit v. Management of Hindustan Times Ltd., Hindistan Times Ltd. v. Rajender Kumar Dixit, 2013 SCC Online Del 4781; Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta, (2009) 16 SCC 562.

36 Per-contra, Mr. Siddharth Dutta, learned counsel appearing for the respondent, submits that the entire inquiry against his client, was biased. He emphasized the fact that, after handing over to the DR, voluminous documents on 19th August 1993, the IO gave him only an hour's time to peruse the same and that, on the DR insisting, less than 24 hours time was given, the inquiry being re-fixed for the morning of the very next date. He submits that the IO signally erred in relying on the evidence of the MWs without allowing his client a reasonable opportunity to test the same by cross examination, and that this illegality vitiates the inquiry proceedings in their entirety. Even on 20th August 1993, he would submit that the bias of the IO, was apparent as he adjourned the hearing only by two hours, to enable the DR to arrive at Rohtak. He points out that it was impossible for anyone to travel

from Delhi to Rohtak in two hours. He also points out that, when, ultimately, his client agreed to change his DR, the IO directed the DR to go through all the documents and cross examine the MWs then and there, which, too, he would submit, is on the face of it, unreasonable. As against the strictness of attitude to his client, he submits that, the PO was given a very long rope and was given a further opportunity to submit additional documents and thereafter two additional documents were submitted by the PO and were taken into account by the IO while giving his report. It was, in his submission, entirely impossible for the IO to rely on the evidence of the MWs, without having been extended to his client a reasonable opportunity to cross examine them. In order to emphasize unreasonableness displayed by the petitioner towards his client, he also drew my attention to the communication dated 25th August 1992, from the petitioner to the respondent, wherein the respondent refused to supply the respondent, the documents on the basis of which the charges had been framed against him. Mr. Siddharth Dutta submits that it was entirely unreasonable to expect his client i.e. the respondent-workman to submit any meaningful response to the charge sheet issued to him without being provided the documents on the basis of which the charges were framed. The documents, he points out were ultimately supplied to his client only on 19th August 1993, where further his client was afforded precious little time to go through the documents and lead his defence. He also opposed the prayer of the petitioner-Bank to be granted an opportunity to lead evidence before the learned Tribunal / Labour Court to establish the charges against the respondent, submitting that, after so

many years, grant of any opportunity would be a travesty of justice. He finally sought to submit that his client, had, in fact been victimized as he was a Union Leader.

37 In support of his submissions, Mr. Siddharth Dutta relied on the following decisions:

Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570; Pepsu Road Transport Corporation v. Lachhman Dass Gupta, (2001) 9 SCC 523; State of Uttar Pradesh v. Shatrughan Lal VIII (1998) SLT 196.

38 Mr. Rajesh Kumar in rejoinder, stated that the law did not require the documents, on the basis of which the charges had been framed, to be supplied along with the charge sheet, and required, rather, the workman to submit his defence at the initial stage. As such, in his submission there was no illegality for the refusal, on the part of his client, to accede to the request of the respondent, for being provided the documents, on the basis of which the charge sheet had been issued, at the initial stage. Regarding the submissions of the respondent, that the said documents were ultimately provided to him only on 19th August 1993, Mr. Rajesh Kumar would urge that they could not very well have been supplied at any earlier point of time as the respondent appeared, for the first time on 19th August 1993 and was repeatedly taking adjournments prior thereto.

Analysis

39 The first issue that arises for consideration, is whether the learned Tribunal was justified in holding that the inquiry, against the respondent, as conducted by the IO, infringed the principles of natural justice, and that adequate opportunity had not been extended, to the respondent, to defend the case against him.

40 The learned Tribunal has, after setting out the proceedings that had transpired before the IO, opined that there had been a violation of the principles of natural justice and fair play, in the matter of grant of opportunity, to the respondent, to defend the charges against him. The petitioner has no cavil with the recital, by the learned Tribunal, of the proceedings that had taken place before the IO. The contention of Mr. Rajesh Kumar is, rather, that the learned Tribunal erred in holding that these proceedings did not disclose grant of proper opportunity, to the respondent, to defend his case, and that they revealed infraction of the principles of natural justice. He, therefore, would exhort this court to reverse the finding, of the learned Tribunal, that the respondent had not been treated fairly, or granted adequate opportunity, in the matter of defending the charges levelled against him, before the IO.

41 Whether the findings of the learned Tribunal, on this issue, merit such interference, is the question at the hands of this Court.

42 The scope of interference, by this Court, with Awards passed by Labour Courts or Industrial Tribunals, has been examined by me in a

recent judgement, dated 21st July 2017, in ***D.D.A. v Mool Chand***, subsequently reported in ***MANU/DE/2016/2017***. The primal guiding principle, in this regard, remain the following well-known passages, on the scope of *certiorari*, as contained in ***Syed Yakoob v K.S. Radhakrishnan, AIR 1964 SC 477***:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached (sic) by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and

the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

43 Following thereupon, paras 28 to 30 of the report in *Mool Chand (supra)* read thus:

“28. Relying on the principles enunciated in the above decision, a catena of pronouncements of the Supreme Court, including Management of *Madurantakam Cooperative Sugar Mills Ltd. v. S. Viswanathan*, (2005), 3 SCC 193, *P.G.I of Medical Education and Research, Chandigarh v. Raj Kumar*, (2001) 2 SCC 54 and *M.P State Electricity Board v. Jarina Bee*, (2003) 6 SCC 141, followed, which may be regarded as having laid down, authoritatively, the following principles:

- ‘(i) The Labour Court/Industrial Tribunal is the final fact finding authority.
 - (ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/unacceptable evidence.
 - (iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/Industrial Tribunal, before proceeding to do so.
 - (iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.
 - (v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.”
29. "Perversity", for its part, is attributed to a judicial/quasi judicial decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality [*Damodar Lal v. Sohan Devi*, (2016) 3 SCC 78; *S R Tiwari v. Union of India*, (2013) 6 SCC 602; *Rajinder Kumar Kindra v. Delhi Administration*, (1984) 4 SCC 635; *Kuldeep Singh v. Commissioner of Police*, (1999) 2 SCC 10; *Gamini Bala Koteswara Rao v. State of AP*, (2009) 10 SCC 636; *Babu v. State of Kerala*, (2010) 9 SCC

189; Dr. Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657].

30. *Damodar Lal (Supra)* further postulates that in examining whether a decision is, or is not, perverse, the classic test, of the reasonable man's conclusion on the facts before the authority concerned would apply. The same decision also reiterates the trite position that inadequacy of evidence, or the possibility of reading the evidence in a different manner, would not amount to perversity.”

44 Guided by the above principles, I am of the view that, insofar as the finding, of the learned Tribunal, that the respondent had not been given sufficient opportunity to defend his case, or cross-examine the MWs, is concerned, the petitioner has not been able to make out a case for interference, by me, therewith, in exercise of my jurisdiction under Article 227 of the Constitution of India. Mr. Rajesh Kumar has emphasised the fact that several adjournments, prior to 19th August 1993, had been taken by the respondent, and sought to contend, on the basis thereof, that the decision of the learned IO, to not grant a further adjournment on 20th August 1993, was justified. This submission, while attractive at first blush, cannot sustain, in view of the following statement of the law, contained in *S.B.I. v Chandra Govindji, (2000) 8 SCC 532* (as contained in para 7 of the report):

“In ascertaining whether a party had reasonable opportunity to put forward his case or not, *one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground.* The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected.

Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter.” (Emphasis supplied)

45 Even on facts, the submission of Mr. Rajesh Kumar cannot merit acceptance. There is no dispute about the fact that the documents, on the basis of which the chargesheet had been drawn up against the respondent, as also the evidence of various MWs, was given, to the respondent, for the first time, on 19th August 1993. It was imperative, therefore, for the IO to, thereafter, afford the respondent a meaningful opportunity to study the said documents, responded thereto, and test the evidence presented by the petitioner. The attitude of the IO, in my view, has rightly been criticised by the learned counsel for the respondent. After having handed over, to the DR, appearing on behalf of the respondent, voluminous documents, on 19th August 1993 for the first time, the IO was willing only to grant one hour’s time, to the DR, to study the same. On the DR insisting, the IO condescended to grant time till the next morning, which, again, would be less than 24 hours. If this was not reflective enough of the unfair manner in which the IO was proceeding, it is seen that, even on 20th August 1993, the IO did not agree to adjourn the matter, despite the respondent’s submission that the DR’s child was not well. Significantly, the proceedings of 20th August 1993, as drawn up by the IO, do not reflect any doubt having been entertained, by the IO, regarding the genuineness of the submission that the DR’s child was unwell, or regarding the letter handed over by the respondent to the IO on that date. The proceedings of 20th August 1993 stand reproduced,

hereinunder, *in extenso*, and a reading thereof does not disclose any doubt, having been entertained, by the IO, regarding the truth of the submission that the child of the DR was unwell. Rather, the only basis, for refusing the request, of the respondent, for an adjournment on the said date, appears to be that the matter was coming up before him for the sixth time.

46 The reference, to the proceedings on 20th August 1993, as contained in the Inquiry Report submitted by the I/O, for its part, read thus:

“On 20th August 1993, that Defence Representative did not turn up in time at the appointed time i.e. 10 AM. I had joined the proceedings after 12 noon and waited for the Defence Representative. At 12:30 PM, the CSE produced a letter written by the Defence Representative intimating his inability to attend the Inquiry *due to personal reasons*. Since enough chances and time were already given to the chargesheeted employee, I did not agree to further adjournments as all the witnesses were present. I requested Mr I K Pruthi to Cross-examine witnesses, but he did not agree for the same. He was also asked to seek the services of any other person who would defend his case, but he only sought for a further adjournments *without any reasonable ground*. The proceedings were then conducted at 2:15 PM.” (Emphasis supplied)

One is forced to comment, on reading the manner in which the IO has chosen to refer to the proceedings of 20th August 1993, that he has been less than economical with the truth. *There is no reference, whatsoever, to the submission, of the respondent, that the child of the DR was unwell, and that adjournment had been sought, on 20th August 1993, on that ground.* Rather, the reference, of the IO, in the above extracted paras from the Inquiry Report, to the adjournment, on 20th

August 1993, having been sought by the DR “on personal reasons”, and the finding that the respondent had sought for an adjournment “without any reasonable ground”, appear to be consciously misleading. Without any further comment on the conduct of the IO in this regard, I am constrained to observe that, even in law, the IO erred in relying on the fact that adjournments had been granted earlier. Once, on the request of the respondent, the IO had been directed to proceed with the enquiry *de novo*, the spectre of the proceedings that had taken place prior thereto, stood exorcised. After the matter had, thus, been taken up, *de novo*, by the IO, there is no dispute that only two dates of hearing had been fixed, i.e. 19th August 1993 and 20th August 1993. The adjournments which might have been taken prior to the matter being, as it were, remanded to the IO, and proceeded *de novo*, could, therefore, have had no bearing on the exercise of discretion, by the IO, regarding the request for adjournment, made by the respondent, on 20th August 1993. That apart, even applying the principle laid down by the Supreme Court in ***Chandra Govindji (supra)***, the legitimacy of the request, for an adjournment, made on 20th August 1993, could not be tested on the basis of the number of adjournments taken earlier. The request for an adjournment, on 20th August 1993, was undoubtedly on valid grounds, i.e. the illness of the child of the DR. The DR was, effectively, the counsel for the respondent before the IO, and a refusal, to grant a single adjournment, even when the ground was illness of the child of the counsel, has necessarily to be characterised as perverse, and reflective of undue haste to conclude the proceedings.

47 That the principles of natural justice and fair play are not straitjacketed, is a well-known and well accepted truism. The solemnity of the proceedings, and the seriousness of the consequences that would ensue, where opportunity, as sought for, not granted, are considerations which have necessarily to inform the dispassionate adjudicator, while adjudicating on such a request. In the present case, manifest travesty of justice has resulted, by the refusal, of the I/O, to grant a single adjournment on 20th August 1993, as prayed for by the respondent, resulting in the enquiry report opining against him, relying on the very evidence of the MWs, whose cross examination was denied to the respondent. It has resulted in the respondent being thrown out of his job, depriving him of the only source of livelihood. The repercussions of dismissing a low paid workman from service is an aspect which, I find, in case after case, is not appreciated by the employer concerned. While it is true that the continuance, in service, of an employee whose conduct is subversive of the discipline of the institution, or who is guilty of corrupt practices, irrespective of the degree thereof, is obviously not advisable, the decision to remove such an employee from service has necessarily to be taken only after rigorous compliance with the principles of natural justice and fair play. Such a decision results in civil death of the workman, and has the perilous potentiality of casting his entire family on the roads. There can be no halfway house in such cases. Any let-up, in grant of full opportunity, to the workman, to defend his case, would be fatal to the proceedings. Inquiry officers and disciplinary authorities, deciding

such cases, are obliged, in morality as much as in law, to be alive to the fact that, by a single stroke of the pen, they could be pulverizing the sole source of sustenance of an entire family.

48 Without further pontificating on the issue, suffice it to state that, in the present instance, compliance with the principles of natural justice and fair play required the IO to accede to the request, of the respondent, for one adjournment of the hearing fixed for 20th August 1993, and in refusing the said request, the IO, as the learned counsel for the respondent correctly submits, acted in blatant violation of the principles of natural justice.

49 ***Chandra Govindji (supra)***, it may be noted here, was followed, by this court, while dealing with a case of disciplinary proceedings against a chartered accountant, in ***Naresh Tharad v Institute of Chartered Accountants, (2015) 148 DRJ 293*** wherein it has been observed as under (in para 16 of the report):

“The learned counsel for the respondent has stated that there was no violation of principles of natural justice and the request of the petitioner for adjournment of the hearing scheduled on 25.11.2011 was only for the purpose of delaying the proceedings. *It is quite possible that the intention of the petitioner may have been to delay the proceedings. However, as the disciplinary proceedings may have a serious adverse consequence on the concerned member, it would be appropriate to err on the side of granting an opportunity to the concerned member rather than to deprive him of a fair hearing.*”

(Emphasis supplied)

Applying the same test, given the seriousness of the consequences that have resulted, as an outcome of the refusal, by the IO, to grant

adjournment on 20th August 1993, it has to be held that at least one opportunity ought to have been granted, to the respondent, as prayed for, by him, on the said date.

50 The decisions relied upon, by Mr. Rajesh Kumar, to support his proposition that sufficient opportunity had been extended, to the respondent, to defend the charges against him, do not deal with a situation in which, on the request of the charged officer/workman, the DA directed the IO to continue the proceedings after granting an opportunity to him. That single fact, as already noted hereinabove, makes a world of difference. Once the decision of the IO to close the proceedings had effectively been set aside, by the DA, by directing the IO to extend a further opportunity to the respondent, the IO was duty bound, while doing so, to strictly adhere to the principles of natural justice and fair play. He has not done so; ergo, the proceedings before him stand vitiated.

51 That takes us to the next limb of the case, i.e., the decision, of the learned Tribunal, not to grant any opportunity, to the petitioner, to prove the charges, against the respondent, before it, by leading evidence, in view of the fact that no request, to that effect, had been made by the petitioner. The issue of whether, in the absence of a request, by the Management-employer, to lead additional evidence before the Labour Court/Industrial Tribunal, to prove the charges against the workman, even if the enquiry had been held not to be validly conducted, fell for consideration before a Constitution Bench

of the Supreme Court, in *Karnataka State Road Transport Corporation v Lakshmiddevamma*, (2001) 5 SCC 433, consequent upon differing opinions, on the point, being expressed by two Division Benches, in *Shambu Nath Goyal v. Bank of Baroda*, (1983) 4 SCC 491 and *Rajinder Jha v. Presiding Officer, Labour Court*, 1984 Supp SCC 520. While Y.K.Sabharwal, J. (as his Lordship then was) rendered the dissenting judgement, in favour of the Management, separate opinions, in favour of the workman, were delivered by N. Santosh Hegde, J [for himself and S.P.Bharucha, J. (as his Lordship then was)] and Shivraj Patil, J [for himself and V.N.Khare, J. (as is Lordship then was)]. While Santosh Hegde, J held that, if no request for being permitted an opportunity to lead additional evidence, before the Labour Court/Industrial Tribunal, to prove the charges against the workman, was contained in the written statement filed by the Management, the Management could not, at any later stage, make such a request, Shivraj Patil, J preferred a more moderate approach, holding that, in an appropriate case, the Labour Court/Industrial Tribunal could allow the Management to lead additional evidence, supporting the case against the workman, even if no request, to that effect, was contained in the written statement filed in response to the workman's Statement of Claim, but was made at some later stage. This slight difference, between the views expressed by Santosh Hegde, J and Shivraj Patil, J, does not really affect the present case, as, viewed either way, the contention, of Mr. Rajesh Kumar, that the learned Tribunal necessarily had to afford an opportunity, to his client, to prove the charges against the respondent, even where no such

request was contained, either in the written statement filed by the petitioner before the learned Tribunal, or in any separate application filed for the said purpose, after rendition of the order on the preliminary issue regarding validity of the enquiry, is obviously misconceived. In the absence of any request, made at any stage, by the petitioner, to the learned Tribunal, to be permitted to lead additional evidence to prove the charges against the respondent, no-fault, whatsoever, can be found with the decision, of the learned Tribunal, not to grant such an opportunity to the petitioner.

52 On this aspect of the matter, too, therefore, the impugned Award of the learned Tribunal is unexceptionable.

53 In view of the law laid down in *Lakshmiddevamma (supra)*, I am of the opinion that, at this stage, it is not open for me to allow the petitioner any opportunity to lead evidence before the learned Tribunal. The submission, of learned counsel for the petitioner, that the charges against the respondent were serious and, if true, would have justified his expunction from service, is undoubtedly well taken. Even so, I cannot close my eyes to the fact that 23 years have passed, since the dismissal of the respondent. Aberrations in character, even if existing, are bound to metamorphose, over nearly two and a half decades, and it would be unrealistic, at this point of time, to unfavourably view the respondent, merely on the basis of the charges that had been levelled against him a quarter of a century ago.

54 Having said that, is equally unrealistic to maintain the direction, by the learned Tribunal, to reinstate the respondent in service with back wages. The law has metamorphosed, over a period of time, and has run the gamut from the theory of reinstatement to that of awarding lump-sum compensation. [Refer *Senior Superintendent Telegraph (Traffic) v Santosh Kumar Seal, (2010) 6 SCC 773*]

55 The question, then, arises as to the quantum of “lump-sum compensation” that should be awarded to the respondent. Given the fact that the respondent has not been serving the petitioner, since the date of his dismissal from service, I am of the view that the interests of justice would be subserved if the respondent were awarded 75% of the back wages to which he would be entitled, till the date of his superannuation (which, I am informed, is 2 years hence). The wages payable to employees of the petitioner-Bank are governed by the Bipartite Settlements, arrived at, from time to time, between the Bank and the employees. In working out the back wages that would have been payable to the respondent – and, consequently, 75% thereof – periodical revisions of the wages payable, on the basis of Bipartite Settlements arrived at from time to time, would be taken into account. At the same time, pursuant to interim orders passed by this court under Section 17-B of the Act, a certain monthly amount has been paid to the respondent, by the petitioner. Though the respondent has expressed his dissatisfaction therewith, in various interlocutory applications that have been filed by him from time to time, it is not necessary to enter into the said applications now, in view of the order

that is being passed today. Suffice it to state that the payment to be made to the respondent, as per this judgement, would be so made after deducting the amounts paid to the respondent under Section 17-B of the Act. Further, in case the petitioner is able to establish that the respondent has, at any point of time after his dismissal from service by the petitioner, been in gainful employment, the amount earned by the respondent in the course of such employment would also be deductible, while making payment to him in terms of this judgement.

56 No further amount (including retiral benefits) would be payable to the respondent, apart from the above.

57 I am of the opinion that the amount that would be payable to the respondent, in accordance with para 52 (*supra*), should appropriately be worked out by the jurisdictional Tribunal/Labour Court. Given the period for which these proceedings have remained pending before this court, this exercise should appropriately be done in a time bound manner.

58 Accordingly, this writ petition is disposed of by maintaining the findings contained in the impugned Award, dated 18th March 2004, but modifying the relief, granted therein, to payment in accordance with para 52 (*supra*). Solely for working out the amount that would be payable on that basis, the matter is remanded to the jurisdictional Labour Court/Industrial Tribunal, which shall make every endeavour to arrive at a decision, thereon, as expeditiously as possible and, at any

rate, within a period of six months from the presentation, before it, of a certified copy of this judgement, by either party. Needless to say, the petitioner and the respondent shall have a right to be represented, before the Labour Court/Industrial Tribunal in the said proceedings. Payment, as computed by the learned Labour Court/Industrial Tribunal, shall be made within a period of 4 weeks from the date of its decision.

59 There shall be no order as to costs.

60 Pending interlocutory applications, if any, stand disposed of, as they do not survive for consideration.

**C. HARI SHANKAR
(JUDGE)**

DECEMBER 14, 2017
Gayatri