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

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LPA 716/2015

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Date of decision : 4th May, 2017

RAJENDRA SINGH

..... Appellant

Through: Mr. Ravindra S. Garia, Adv.

versus

STATE BANK OF INDIA

..... Respondent

Through: Ms. Kittu Bajaj, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The petitioner has assailed the decision dated 27th April, 2015 passed by the learned Single Judge dismissing W.P.(C) No. 5168/2013.

2. The factual narration giving rise to the challenge is within a narrow compass and to the extent necessary, we note the same hereunder.

3. It appears that the appellant was the employee of the State Bank of India. On account of certain allegations against him, a decision

was taken to conduct disciplinary proceedings against the appellant.

On 8th December, 2006, he was suspended from service.

4. Memo of charges were issued to the appellant on 12th November, 2007 and 4th June, 2008 respectively for alleged misappropriation of funds from customers account. On 1st September, 2008, a decision was taken to conduct disciplinary proceedings against the appellant. The enquiry culminated in finding the appellant culpable for commission of the offences with which the appellant was charged. Finally on 24th August, 2010, the penalty of removal from service with superannuation benefits was imposed upon the appellant. It was additionally directed that the period of suspension would be treated as period not spent on duty.

5. Aggrieved by the order of the disciplinary authority, on 23rd September, 2010, the appellant assailed the same by way of an appeal before the Appellate Authority. This appeal, however, also failed and by an order dated 16th November, 2010, the order of the disciplinary authority was upheld.

6. On 27th July, 2011, the appellant raised a dispute with regard to

the orders against him by way of Industrial Dispute No. 52/2011. The appellant was invoking the jurisdiction of the Industrial Tribunal under Section 10(4A) of the Industrial Disputes Act, 1947 ('ID Act' hereafter). However, the Industrial Tribunal passed an order dated 23rd April, 2013 holding that the appellant had not complied with the requirement of sub-section 2 of Section 2A of the ID Act, 1947 and, therefore, the Tribunal could not invoke its jurisdiction to adjudicate upon the dispute.

7. The order of the Industrial Tribunal was assailed by the appellant before the learned Single Judge by way of W.P.(C) No.5168/2013 which challenge was repelled by the impugned order dated 27th April, 2015.

8. The learned Single Judge has also held that Section 2A inserted by the Parliament, was a Central Amendment Act which, therefore, had an overriding effect over Section 10(4A). It was also held that Section 10 contained a non-obstante clause notwithstanding anything contained in Section 10, which gave the statutory provision of Section 2A, an overriding effect over the other statutory provisions.

9. This order has been challenged before us primarily on a legal submission. The appellant has complained that as a result of the interpretation accorded to the statutory provision, the appellant has been denied the right of legal redressal as well as judicial review and that the impugned order of the Industrial Tribunal dated 23rd April, 2013 and the judgment of the learned Single Judge dated 27th April, 2015 are erroneous for the reason that they have completely overlooked the constitutional mandate contained in Article 239AA.

We have heard learned counsels for the parties on this short question of law.

10. In order to appreciate the intendment and import of statutory provisions, it is essential to note the statutory amendments which have been brought on record.

11. Section 10(4A) was notified by a notification no. F.No.14(5)/LA-2003/1156 dated 25th July, 2003 and took effect from 22nd August, 2003 upon effect of the aforesaid notification. This notification shows that the legislation was proposed by the legislative assembly of the National Capital Territory of Delhi and was placed

for consideration before the President of India. The notification giving effect to the statutory amendment clearly states that the Amendment Act proposed by the Legislative Assembly of the National Capital Territory of Delhi “*received the assent of the President of India on 13th July, 2003*”. As a result of this amendment (which was called the *Industrial Disputes (Delhi Amendment) Act, 2003*), the following sub-section came to be inserted into the Industrial Disputes Act, 1947:

“10. xxx

(4A) Notwithstanding anything contained in section 9C and in the case of a dispute falling the scope of Section 2A, the individual workman concerned may, within twelve months from the date of communication of the order of discharge, dismissal, retrenchment or termination of the date of commencement of the Industrial Disputes(Delhi Amendment) Act, 2003, whichever, is later, apply in the prescribed manner, to the Labour Court, tribunal, as the case may be, for adjudication of the dispute and the Labour Court or Tribunal, as the case may be dispose of such application in the same manner as a dispute referred under sub-section(1).”

12. So far as the power of the Legislative Assembly of the

Government of NCT of Delhi to legislate is concerned, it is essential to advert to Article 239AA of the Constitution of India which was inserted by the Constitution (69th Amendment) Act, 1991. This constitutional provision makes special provision with respect to Delhi. For expediency, we extract clauses 2(c) and 3(c) of Article 239AA which read thus :

“Article 239AA

xxx xxx xxx

2 (c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively and any reference in articles 326 and 329 to “appropriate Legislature” shall be deemed to be a reference to Parliament.

xxx

3(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or , as

the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void;

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent such law shall prevail in National Capital Territory ;

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.”

(Emphasis by us)

13. Given the grounds on which the order dated 23rd April, 2013 was made by the Industrial Tribunal and stands upheld by the impugned order dated 27th April, 2015, it is also essential to note the subsequent amendment which was effected to the Industrial Disputes Act, 1947. In the year 2010, the Parliament of India by virtue of Act 24 of 2010, brought Section 2A on to the statute book with effect from 15th September, 2010 which provision reads as follows :

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- [(1)] Where

any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of three months from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.]

[(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]”

(Emphasis supplied)

14. Reading of Section 2A would show that this statutory amendment was effected on 15th September, 2010 after Section 10(4A) was brought on the statute book on 22nd August, 2003. Therefore, enactment so far as the date of the two legislations coming into force is concerned, Section 2A is the later.

15. It is noteworthy that Section 10A has been provided in Chapter III of the Industrial Disputes Act, 1947 under the heading “*Reference of dispute to Boards, Courts or Tribunals*”. Section 2A features in Chapter I.

16. We also find that Section 2 contains a non-obstante clause and stipulates that the provisions of Section 2A would take effect “*notwithstanding anything contained in Section 10*”.

17. However, the spirit, intendment and purpose of the legislation cannot rest on consideration of the non-obstante clause alone. We find that Section 10(4A) also contains a non-obstante clause.

18. Section 10(4A) enables an individual workman seeking reference of disputes to “*boards, court or tribunals*” to approach the Labour Court or the Tribunal for adjudication of the dispute, within 12

months from the date of communication to him inter alia of an order of discharge, dismissal, retrenchment or termination. Thus, the legislative intent of Section 10(4A) appears to enable a workman to directly approach the Labour Court or Tribunal, without having recourse to the machinery prescribed in other provisions of the Industrial Disputes Act, 1947.

19. Section 10(4A) clearly does not deal with the substantive rights and liabilities of the parties but only enables invocation of a remedy upon the happening of the event of discharge, dismissal, retrenchment or termination of service. The opportunity to do so is also circumscribed by the period of limitation in as much as the Legislature has made available this option to the workman as exercisable only within 12 months from the date of communication of the order in question.

20. So far as Section 2A is concerned, sub-section (1) thereof contains a deeming provision so far as disputes connected with or arising out of discharge, dismissal, retrenchment or termination of service of a workman. It deems such dispute of even an individual

workman to be treated as an industrial dispute, notwithstanding that no other workman nor any union of a workman is a party to the dispute.

21. Sub-section 2 of Section 2A which contains the non-obstante clause vis-a-vis Section 10 of the enactment, enables such workman (i.e. one who stands discharged/dismissed/retrenched/ or whose services have been terminated) to make an application directly to the Labour Court or Tribunal for adjudication of the dispute referred to therein. Sub-section 2 prescribes that such workman would first have to make an application to the Conciliation Officer of the appropriate government for conciliation of the dispute and enables the workman to, on expiry of forty five days from the date of making such application, to make an application directly to the Labour Court or Tribunal for adjudication of the dispute. As a result, the workman stands exempted from awaiting the outcome of the conciliation and a reference being made by the conciliation officer in accordance with the other provisions of Section 10 of the Industrial Disputes Act, 1947.

22. We find that the Parliament has provided no exception to the enabling provision contained in Section 10(4A) of the enactment.

23. It has been argued that the impugned judgment dated 27th April, 2015 has treated Section 2A as having an overriding effect over Section 10(4A) of the Industrial Disputes Act observing that there was repugnancy between the two provisions. Reference stands made to Article 254 of the Constitution of India which is concerned with inconsistency between laws made by the Parliament and laws made by the legislators of States.

For the purposes of considering the legislative competence of the legislative assembly of the Govt. of NCT of Delhi and the contours of this power, it is necessary also to advert to the provisions contained in Article 239AA of the Constitution of India extracted above.

24. We find that the Govt. of NCT of Delhi stands conferred with a special status under the Constitutional Scheme. The Parliament has enacted Article 239AA, special provision conferring special status with respect to Delhi. In clause 3C of Article 239AA extracted above,

the Parliament has also anticipated repugnancy of a legislative provision made by the Legislative Assembly of the Government of NCT of Delhi with a provision of law made by the Parliament with respect to that matter. The first proviso takes into consideration such law enacted by the Legislative Assembly by the Government of NCT of Delhi which stands reserved for consideration of the President and has received his assent. This proviso has specifically stated that the law made by the Legislative Assembly which has received the assent of the President, shall prevail in the National Capital Territory of Delhi.

25. We have noted above that so far as Section 10(4A) of the Industrial Disputes Act is concerned, it is a legislative amendment which had been proposed by the Legislative Assembly of the Government of NCT of Delhi which was reserved for consideration of the President and stands enacted only after the assent of the President was received on 13th July, 2003. In view of the position declared by the first proviso to clause 3C of Article 239AA, so far as Section 10(4A) is concerned, the same would prevail in the National Capital

Territory of Delhi.

26. We also note that, so far as Section 10(4A) of the Industrial Disputes Act, 1947 and Section 2A of the enactment are concerned, they provide two different remedies to a workman who stands discharged/dismissed/retrenched for redressal of his grievance. Section 10(4A) enables a workman to directly approach the Labour Court or the Industrial Tribunal within a period of one year from the communication of the order of discharge/dismissal/retrenchment without taking recourse to the procedure prescribed under Section 10. On the other hand, by virtue of Section 2A, a dispute/difference between a workman and his employer connected with or arising out of discharge dismissal retrenchment or termination of service is deemed to be an industrial dispute. Furthermore, the workman is enabled to approach the Conciliation Officer within a period of three months from the occurrence and after expiry of three months from the date of so approaching him, the workman can make a further application directly to the Labour Court or Tribunal for adjudication of the dispute. That is to say, under Section 2A, the second option available

to the workman does not have to await the references by the Conciliation Officer.

27. In view of the above discussion, we are unable to agree with the observations in the impugned order that there was a repugnancy between the two statutory provisions.

28. Even if it could be held that there was a repugnancy between them, by virtue of the operation of the proviso to Article 239AA(3)(c), Section 10(4A) being a law made by the Legislative Assembly of the Government of NCT of Delhi which was reserved for consideration of the President and having received his assent on 13th July, 2003 and stands enacted thereafter, would prevail over the central legislation.

29. Thus, the claim made by the appellant, which came to be registered as ID No. 52/2011, could not have been rejected on the ground that the appellant has not complied with the provisions of sub-section 2 of Section 2A of the Industrial Disputes Act. On the other hand, the Industrial Tribunal was bound to have considered the same and decided it on its merits.

30. In view of the above, it is directed as follows :

(i) The impugned judgment dated 27th April, 2015 of the learned Single Judge in W.P.(C) No. 5168/2013 and the order dated 23rd April, 2013 of the Industrial Tribunal rejecting ID No. 52/2011 are hereby set aside and quashed.

(ii) It is directed that ID No. 52/2011 shall be taken up for consideration by the Industrial Tribunal and decided in accordance with law.

(iii) The parties shall appear before the Industrial Tribunal seized of ID No. 52/2011 on 30th May, 2017 for appropriate directions regarding further proceedings.

This appeal is allowed in the above terms.

Dasti.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

MAY 04, 2017/kr