

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14583 of 2016

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State Bank of India, Administrative Office, Bhawesh Bhawan, Betson Road
Khanjarpur, Bhagalpur 812001 through its Regional Manager Regional Office,
Munger

.... Petitioner

Versus

1. The Union of India, through the Secretary, Ministry of Labour, Government of India, New Delhi
2. The State of Bihar, through the Principal Secretary, Labour Resources Department, Vikas Bhawan, New Secretariat Building Beiley Road, Patna 800001
3. Sudhanshu Shekhar Ghosh son of Sri Nishi Chandra Ghosh resident of Naya Tola, Bihari (Back of P.W.D. Inspection Banglow), P.S.-Jamui, District-Jamui (Bihar) 811307

.... Respondents

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Appearance :

For the Petitioner/s : Ms. Surya Nilambari, Advocate
Mr. Binod Bihari Sinha, Advocate
For State : Mr. Ravi Ranjan, Advocate
For Respondent no.3 : Mr. Ranjeet Kumar Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 07-09-2018

Heard Ms. Surya Nilambari, learned advocate for the petitioner and Mr. Ranjeet Kumar Das, learned advocate for respondent no. 3 and Mr. Ravi Ranjan, learned advocate for the State.

2. This writ petition has been filed by the petitioner for setting aside award dated 30.11.2015 passed in Industrial Dispute Case No. 04 (C) of 2011 by the Presiding Officer, Industrial Tribunal, Patna (for short 'Tribunal') whereby and whereunder the



Tribunal constituted by the State Government for deciding industrial disputes falling in domain of the State Government in terms of Section 2(a) of the Industrial Disputes Act, 1947 (for short 'the Act') has entertained and decided the industrial dispute relating to dismissal of respondent no. 3 and the order of punishment of dismissal of the respondent no.3 from service passed by the Disciplinary Authority as well as the Appellate Authority have been set aside and the Management has been directed that the respondent no. 3 should be reinstated in the bank service.

3. Ms. Surya Nilambari, learned advocate for the petitioner submitted that the workman has been conferred the right to approach the Labour Court or Tribunal directly for adjudication of dispute after the expiry of 45 days from the date he made an application to the Conciliation Officer of the appropriate government under Section 2(a) (ii) of the Act in case of a workman for whom the appropriate government is the Central Government. The workman cannot directly approach the Tribunal or Court constituted by the State Government by virtue of the third proviso to Section 10 (1) (d) and 2-A (2) of the Act in respect of industrial dispute in relation to which the Central Government is the appropriate authority. Under the said provisions, it is the appropriate government alone who is vested with the discretion to choose any one by the authorities as specified for settlement of



disputes. In this regard, she has placed reliance on a decision of this Court in **Reliance Communication Ltd. vs. The Union of India through the Secretary, Department of Labour and Employment and Ors. [2017 (3) PLJR 666]**. She has also placed reliance on an unreported decision of this Court rendered on 22.11.2017 in **CWJC No. 2053 of 2016**, which has been upheld by the Division Bench, vide order dated 17.05.2018 in **LPA No. 1822 of 2017**. She contended that in the case, at hand, respondent no. 3, in whose case, the appropriate government is the Central Government directly approached the State Industrial Tribunal, Patna, which lacks the necessary jurisdiction to entertain the complaint merely on the application of the workman in absence of any reference of the dispute to it by the Central Government.

4. She further contended that the Tribunal interfered with the quantum of the penalty imposed by the State Bank of India (for short 'the Bank') even after concluding that the charges of defrauding the Bank amounting to gross misconduct as against the respondent no. 3 had adequately been proved in the disciplinary proceeding. She pleaded that the finding given by the Tribunal that the Bank has not been put to any serious loss could have hardly been a mitigating circumstance in favour of the workman. In this regard, she has placed reliance on a decision rendered by the Supreme Court in **The State Bank of India Vs. Bela Bagchi**



[(2005) 7 SCC 435] and a decision rendered by this Court in **The Bank of India through the Chairman and the Managing Director & Anr. vs. The Union of India through the Secretary Ministry of Labour and Employment & Ors [2017 (2) PLJR 184]**.

5. She pleaded that in case of Bank employees, they are expected to deserve high standard of honesty and integrity being custodian of public money. She argued that the lenient treatment for gross misconduct on the part of respondent no. 3 by the Tribunal seems to be misplaced also for the fact that the said respondent never bothered to make any attempt to clear himself of the charges levelled against him in the disciplinary proceeding.

6. Advancing her arguments further, she contended that the service record of respondent no. 3 had previously been besmirched with the penalty of dismissal in 1999 which was reduced by the Appellate Authority in a proceeding held before the one out of which the present case arose.

7. Mr. Ravi Ranjan, learned advocate appearing for the State has submitted that the petitioner comes under the schedule of employment of the Central Government. He submitted that the respondent no. 3 had raised the industrial dispute before Assistant Labour Commissioner (Central), Patna. Since the dispute could not be resolved for three months, he directly filed a case against his



employer before the Tribunal under Section 2(a) (i) and (ii) of the Industrial Disputes (Amendment) Act, 2010. He contended that since the State of Bihar is a formal party in the case, the dispute is primarily between the petitioner and the private respondent no. 3 and the writ petition is not tenable as against the State of Bihar.

8. Mr. Ranjit Kumar Das, learned advocate appearing for the respondent no. 3 submitted that initially, a charge-sheet was issued by the Bank and the respondent no. 3 was placed under suspension with effect from 29.03.1996. He denied the allegation and pleaded not guilty. After enquiry, he was removed from service on 28.05.1999. Thereafter, he preferred an appeal against the order of removal dated 28.05.1999. The Appellate Authority allowed the appeal and ordered for reinstatement in service. He contended that while the workman was working at Jamui Branch, he had been transferred to Godda Branch, where he was sanctioned temporary loan of Rs.40,000/- for meeting the medical expenses of his wife which was adjusted by him in due course. However, the Bank lodged an FIR against him. The police filed a charge-sheet after completing investigation in the court of Chief Judicial Magistrate, Jamui. After trial, he was convicted by the trial court whereafter he was again dismissed by the Bank. He preferred an appeal before the court of District & Session Judge, Jamui against the judgment and order of conviction dated 29.05.2003. The Appellate Court set aside



the order of conviction and acquitted him from all the charges. Since the management of the Bank had made up their mind to dismiss him from service of the Bank. He was again served with second a charge-sheet on 11.10.2002. The enquiry concluded on 22.07.2008. Since he was suffering from serious ailment, he was unable to participate in enquiry. However, he used to send his representation along with medical certificate for postponing the enquiry till his recovery. But the enquiry officer did not care his request and ex-parte enquiry report was submitted on 06.10.2008 whereafter he was awarded punishment of dismissal by the Disciplinary Authority on 21.01.2009. He contended that there is no illegality in approaching the Tribunal as he had first gone for conciliation proceeding. Since the conciliation proceeding did not resolve and even a reference was not made, the workman made an application directly before the Tribunal after expiry of 45 days from the date of filing before the Conciliation Officer according to amended provision in Section 2(a) (i) & (ii) of the Act. He further contended that since there is no Central Government Industrial Tribunal in the Bihar State, hence, the Tribunal, Patna constituted by the State Government has got concurrent jurisdiction over the Industrial Dispute of the Central affairs as per provision prescribed in proviso (3) of Section 10(1) of the Act. He pleaded that the State Government is as much concerned as the Central Government



with regard to maintenance of industrial peace and welfare of the workman. This is why the subject of Labour Industrial Dispute is assigned to the concurrent list. He argued that the Tribunal has taken into consideration the nature of charges and after giving thoughtful consideration found the punishment awarded to the workman shocking to the conscience. Therefore, it set aside the order of dismissal and substituted the punishment by awarding stoppage of two increments with cumulative effect.

9. Having considered the submissions made on behalf of the parties, two issues arise in the instant case for consideration before this Court. The first issue is whether the workman can directly approach the Tribunal Court or Labour Court constituted by the State Government by virtue of third proviso to Section 10 (1)(d) and 2-A(2) of the Act in respect of industrial dispute in relation to which the Central Government is the appropriate Government and the second issue is whether even after concluding that the charges of defrauding the Bank amount to gross misconduct as against the respondent no. 3 had adequately been proved and the Tribunal was justified in interfering with the punishment awarded to the respondent no. 3.

10. As far as the first issue is concerned, this Court had an occasion to examine an identical issue in **The Chief General Manager, State Bank of India Vs. Union of India** through the



Secretary Ministry of Labour, Govt. of India, New Delhi and Ors. [CWJC No. 2053 of 2016] wherein after elaborately dealing with the provisions of law involved in the case, I had held that the workman cannot directly approach the Labour Court/Tribunal constituted by the State Government by virtue of third proviso to Section 10(1)(d) and 2-A(2) of the Act in respect of industrial dispute in relation to which the Central Government is the appropriate Government.

11. I think it apt to extract para 13 to 24 of the said judgment hereunder:-

“13. In order to appreciate the arguments advanced before the Court, it would be necessary to refer to the provisions of the I.D. Act, which are relevant for the present case. They are Sections 2(a)(i), 2A(2), 7(1), 7A(1) and 10(1)(d), and read as under :-

“2. Definition.- In this Act, unless there is anything repugnant in the subject or context,-

(a) **“appropriate Government” means-**

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an



industrial dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956), or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, (47 of 1961), or the Central Warehousing Corporation established under section 3 of



the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), Export Credit and Guarantee Corporation Ltd. or the Industrial Reconstruction Bank of India Limited, the National Housing Bank established under section 4 of the National Housing Bank Act, 1987 (53 of 1987), or an air transport service, or a banking or an insurance company, a mine, an oil-field a Cantonment Board, or a major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the



principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and
2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-

(1) xxx xxx xxx

(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 forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and on 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.

7. Labour Courts.- (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of



industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

7-A. Tribunals.- (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule, and for performing such other functions as may be assigned to them under this Act.

10. Reference of dispute to Boards, Courts or Tribunals.-(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third



Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.”

14. Having noticed the aforesaid provision of the I.D. Act, when I look to the facts of the present case, I find that there is no dispute to the fact that the in relation to any industrial dispute concerning State Bank of India, the “appropriate Government” in terms of Section 2(a)(i) of the I.D. Act is the Central Government, which is



competent to deal with the matter arising out of the I.D. Act.

15. Section 7(1) of the I.D. Act empowers the “appropriate Government” to constitute one or more Labour Courts in a State by notification in the Official Gazette for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the I.D. Act. Thus, the provision is prescribed under Section 7(1) of the I.D. Act to enable the “appropriate Government” to constitute more than one Industrial Tribunal/ Labour Court. Consequently, the Central Government may constitute Labour Courts in any State for adjudication of the matters in respect of which it is the “appropriate Government” whereas the State Government may constitute Labour Courts in its territories for adjudication of the matter in relation to which it is “appropriate Government”.

16. Similarly, the “appropriate Government” as defined under Section 2(a)(i) of the I.D. Act has been empowered by Section 7-A(1) of the I.D. Act to constitute one or more Industrial Tribunals for adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under the I.D. Act.

17. Thus, it would be evident that the Central



Government can appoint Tribunals for any State for adjudication of the industrial disputes in relation to which it is the “appropriate Government” whereas the State Government may constitute one or more Tribunals in its territory for adjudicating the matter in respect to which it is the “appropriate Government”.

18. From perusal of the aforesaid provisions prescribed under Sections 7(1) and 7-A(1) of the I.D. Act, it would be manifest that the intent of the legislature is that the dispute should be adjudicated by the concerned Labour Courts/ Tribunals constituted by the “appropriate Government” only.

19. Further, from perusal of Section 10(1)(d) of the I.D. Act, it would be evident that it vests an absolute and discretionary power on the appropriate Government to refer or not to refer for adjudication an industrial dispute.

20. The third proviso to Section 10(1)(d) of the I.D. Act has been inserted by the Amending Act 46 of 1982. It empowers the Central Government to refer the industrial disputes in relations to which it is the “appropriate Government” to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government. It would, thus, mean that now it is not necessary that the Central Government where it is the “appropriate Government”, must refer the disputes only to the Labour Court or Industrial Tribunals constituted by the Central



Government. This power is absolute as no other body or authority can refer an industrial dispute for adjudication under the I.D. Act. In exercise of its power under Section 10 of the I.D. Act, the Government has the discretion to refer existing and apprehended industrial disputes upon considering the failure report of the Conciliation Officer.

21. From perusal of the 3rd proviso of Section 10(1)(d) of the I.D. Act, by no stretch of imagination, it can be said that a workman can directly approach a Labour Court or an Industrial Tribunal constituted by the State Government in respect of an industrial dispute in relation to which the Central Government is the “appropriate Government”. Under the said provision, it is the Government alone, who is vested with the discretion to choose anyone of the authorities, as specified for the purpose of investigation and settlement of industrial disputes.

22. As far as Section 2-A(2) of the I.D. Act is concerned, it was incorporated in section 2-A by virtue of Amendment Act, 24 of 2010, which came into force with effect from 15.09.2010. Sub-section (2) stipulates that notwithstanding anything contained in Section 10, a workman may make an application direct to the Labour Court or Tribunal for adjudication of the dispute after expiry of forty-five days from the date he has made the application to the Conciliation



Officer of the appropriate Government for conciliation of the dispute and on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute as if it was a dispute referred to it by the “appropriate Government”. The aforesaid provision confers discretion to a workman, who has made conciliation application to directly invoke the jurisdiction of the Labour Court/Tribunal, if conciliation proceedings are not concluded within forty-five days.

23. The provision prescribed under Section 2-A(2) of the I.D. Act cannot be interpreted to mean that it gives a discretion to a workman engaged in a Public Sector Undertaking Bank to approach directly to an industrial Tribunal or Labour Court constituted by the State Government rather the workman in the given circumstance may directly invoke jurisdiction of the appropriate Labour Court/Tribunal.

24. **It is not disputed that the State Bank of India is a Public Sector Undertaking Bank and thus in the present case the appropriate Government was the Central Government,** that is why, the workman had raised his dispute initially before the Assistant Labour Commissioner, Patna, a functionary of the Central Government Labour Department. **In such view of the matter, he could not have filed his case directly before the Industrial Tribunal, Patna, which is a State Industrial**



Tribunal. The Industrial Tribunal, Patna illegally exercised its jurisdiction as it had never the jurisdiction to decide the case on merit. Furthermore, since the workman had resorted to adjudication of his dispute by participating in conciliation proceeding, which ended in failure on 27.08.2010, it was not open for him to then resort to filing the case under Section 2-A (2) of the I.D. Act. On 18.03.2011 when the case was instituted by the workman before the Industrial Tribunal, Patna, there was no conciliation proceeding pending after expiry of 45 days and, therefore, he could not have instituted the industrial dispute case before the Industrial Tribunal, Patna in terms of Section 2-A(2) of the I.D. Act. **The case instituted by the workman was patently illegal and not maintainable. Thus, the entire proceeding culminating in passing the impugned award is totally illegal and unsustainable in law.”**

(emphasis mine)

12. The aforestated judgment in **The Chief General Manager, State Bank of India Vs. Union of India (Supra)** passed by this Court was challenged by the respondent no. 3 in an intra-court appeal vide LPA No. 1822 of 2017. The Division Bench vide its order dated 17.05.2018 dismissed the appeal holding the same to be meritless. The operative part of the order dated 17.05.2018 passed by the Division Bench reads as under:-



“The learned Single Judge has taken a correct view by holding that the State Labour Court/Industrial Tribunal has no jurisdiction to entertain the grievance of the present appellant as it lacks jurisdiction. The proper forum for the said adjudication would have been Central Industrial Tribunal, Dhanbad.

What has been done by the appellant is basically forum hunting, which is not permissible. Any order passed by the Tribunal lacking jurisdiction is non-est in law.

Appeal has no merit. It is dismissed.”

13. Since this case is squarely covered by the judgment of this Court in **The Chief General Manager, State Bank of India Vs. Union of India (Supra)** in which after elaborately dealing with the provisions prescribed under Sections 2(a)(i), 2-A(2), 7, 7-A(1) and 10(1)(d) of the Act, this Court held that as far as Section 2-A(2) of the Act is concerned, it was incorporated in Section 2-A by virtue of Amendment Act, 24 of 2010, which came into force with effect from 15.09.2010 and the provision prescribed under Section 2-A(2) of the Act cannot be interpreted to mean that it gives a discretion to a workman engaged in a Public Sector Undertaking Bank to approach directly to an industrial Tribunal or Labour Court constituted by the State Government rather the workman in the given circumstance may directly invoke



jurisdiction of the appropriate Labour Court/Tribunal. In case of an employee of the Bank, appropriate Labour Court/Tribunal would be a Tribunal/Court constituted by the Central Government.

14. Since the petitioner has succeeded on the first issue, I do not think it necessary for the present to decide the second issue. Since the Tribunal, which has passed the impugned order whereby it has interfered with the dismissal order of the respondent no. 3 from the Bank service itself had no jurisdiction, the award passed by it was without jurisdiction.

15. Accordingly, the writ petition is allowed. The impugned award dated 30.11.2015 passed in Industrial Dispute Case No. 04 (C) of 2011 by the Presiding Officer, Industrial Tribunal, Patna is set aside.

16. However, the respondent no. 3 would be at liberty to raise his dispute before the appropriate Labour Court/Tribunal in accordance with law.

(Ashwani Kumar Singh, J.)

Kanchan/Sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2018
Transmission Date	

