

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2367 of 2016

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U C O Bank, a body Corporate constituted under the Banking Companies acquisition and Transfer of undertaking Act, 1970 and having its Head Office at Kolkata and one of the Zonal Office in Patna through its Zonal Manager namely A.K. Kanthwal, posted as Zonal Manager, UCO Bank, Zonal Office, Mauryalok Complex, Dakbunglow Road, Patna.

.... Petitioner

Versus

1. The Union of India through the Secretary Govt. of India, Ministry of Labour and Employment, Shastri Bhawan, New Delhi.
2. The Desk Officer, Ministry of Labour and Employment, Govt. of India, Shastri Bhawan, New Delhi.
3. The Assistant Labour Commissioner (II), Mauryalok Complex, Block- A, 2nd floor, Patna.
4. The Industrial Tribunal, Patna through its Presiding Officer.
5. The Presiding Officer, Industrial Tribunal, Patna
6. The State Secretary, UCO Bank Employees Association, 2nd floor, Saboo Complex, Exhibition, road, Patna.
7. Sri Arya Nath Singh, Son of Late Uttam Singh. Resident of Village- Takkipur, P.S.- Maharajganj, District- Siwan.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey, Advocate
For the Union of India : Mr. S.D Sanjay (ADDL. SOC. GEN.)
For respondent no. 7 : Mr. K. N. Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-01-2018

This writ petition has been filed by the petitioner for



quashing the award dated 20.07.2015 passed by the learned Presiding Officer, Industrial Tribunal, Patna in Industrial Dispute Case No.2(c) of 2011 by which the learned Presiding Officer has held that the action of the management in imposing the punishment of dismissal from bank service without notice on respondent no.7 Arya Nath Singh, Head Cashier, Chapra Branch is not legal and justified and set aside the punishment awarded by the disciplinary authority vide order dated 11.01.2008 and directed for his reinstatement with all consequential benefits.

2. The facts of the case in brief are that while the petitioner was posted as Head Cashier on 26.07.2006, he was served with a charge-sheet containing charges under two heads, which were as under:-

“(i) That during the course of regular inspection at your branch, the Inspecting Officer, while checking the opening cash balance on 07.06.2006, found the cash shortage to the tune of Rs.78979.14. It is noted that you were the joint custodian of cash keys on those days. The shortage of cash was noted by the Inspecting Officer in the Cashier’s Summary dated 07.06.2006, which was also countersigned by you. On the same day, you made good loss by depositing the amount in cash of Rs.78, 979.14, which was kept in Sundry Creditors,



under your signature as depositor.

(ii) That on 07.06.2006, M/s Sahara Indian presented a cheque bearing no.072181 dated 07.06.2006 for withdrawal of cash of Rs.3.00 lacs. You then paid a sum of Rs.2.00 lacs and gave them a counterfoil of deposit slip for Rs.1.00 lac under your signature with Bank seal. But you did not account for the same in their account on 07.06.2006, as the entry did neither take place in cash Receipt Book nor in the Cashier's Summary as late receipt on that very date. To cover the misdeed, you put an entry of Rs.1.00 lac in the cash scroll on 08.06.2006 which was later on found superfluous as no money was deposited in the account of M/s Sahara India on 08.06.2006. Your such action has brought disrepute to the Bank.”

3. While serving the aforesaid charge-sheet, the Disciplinary Authority asked the petitioner to submit his explanation within seven days as the charges levelled against him constituted a gross mis-conduct on his part.

4. On receipt of the charge-sheet, the petitioner failed to submit any explanation whereafter an enquiry was ordered. The Enquiry Officer conducted inquiry into the matter on different dates and submitted his report on 22.09.2007. The Enquiry Officer



found both the charges levelled against the petitioner proved. Thereafter, a second show cause notice was issued to the petitioner. The petitioner was also provided an opportunity of personal hearing and after considering the materials on record, the Disciplinary Authority vide order dated 11.01.2008 dismissed the petitioner from bank service without notice. The order passed by the Disciplinary Authority was challenged in appeal before the Appellate Authority. The Appellate Authority finding the proved allegations against the petitioner to be grave and serious in nature dismissed the appeal vide order dated 31.10.2008. Thereafter, an industrial dispute was raised by the respondent no.7 before the Assistant Labour Commissioner-II, Patna pursuant to which, a conciliation proceeding was initiated on 05.07.2010. In the conciliation proceeding, a failure report was submitted by the Conciliation Officer on 02.02.2011. After failure of conciliation proceeding, respondent no.7 filed a case directly before the Industrial Tribunal, Patna on 04.02.2011 under Section 2-A(1) and (2) of the Industrial Disputes Act (for short 'the Act') which case was registered as Industrial Dispute Case No. 2(c) of 2011.

5. The Industrial Tribunal, Patna vide its award dated 20.07.2015 held the action of the management of the Bank in imposing punishment of dismissal from Bank's service without



notice on the respondent no. 7 to be illegal and unjustified. It set aside the impugned order of dismissal dated 11.01.2008 passed by the Disciplinary Authority and directed the management of the Bank to reinstate the respondent no.7 with all consequential benefits from the date of his dismissal.

6. The said award dated 20.07.2015 is under challenge in the present writ petition.

7. Assailing the aforesaid award, learned counsel appearing for the petitioner submitted that the award passed by the Tribunal is erroneous both on law as well as on facts. When the irregularities committed by respondent no. 7 were brought to his notice, he accepted his guilt in writing and deposited the amount in question on the same day which was kept in sundry creditor under his signature. In view of the materials on record the charges leveled against the petitioner were proved. In order to substantiate his submission that the order is erroneous in law, he submitted that Industrial Tribunal, Patna is not notified as Central Government Industrial Tribunal for adjudicating the dispute of which Central Government is the “appropriate government”. He submitted that the State Industrial Tribunal could not have entertained the dispute directly raised by the workman in exercise of powers conferred under Section 2-A of the Act. He submitted that the findings of the



Industrial Tribunal are also perverse, as it failed to appreciate that on the date on which order of reinstatement was passed, respondent no.7 had already superannuated from service. He had attained the age of superannuation on 31.03.2010. He further contended that the award passed by the State Tribunal is also bad for the reason that the application under sub-sections (1) and (2) of Section 2-A was filed after expiry of three years from the date of dismissal.

8. On the other hand, Mr. K. N. Gupta, learned Advocate appearing for respondent no. 7 submitted that the award passed by the Tribunal is legal, just and proper and the same does not require any interference by this Court. He submitted that the dismissal from bank service without notice as contained in Annexure- 10 and 11 of the writ petition was illegal, unjust and not based on the correct appreciation of the facts by the Disciplinary Authority and the Appellate Authority. He submitted that respondent no. 7 denied the allegations and submitted that in fact there was no shortage of cash. According to him, respondent no. 7 was forced to write the letter as contained in Annexure-3 to the writ petition. He submitted that the inquiry officer failed to appreciate the defence taken by the petitioner and submitted an erroneous report that both the charges were found to be proved.



9. As far as the legal questions raised by the petitioner is concerned, Mr. Gupta, learned counsel for respondent no. 7 submitted that it is true that an industrial dispute was raised before the Assistant Labour Commissioner, Patna. However, as the conciliation proceeding failed, an application under sub-section (1) and (2) of Section 2-A of the Act was filed before the Industrial Tribunal, Patna. He submitted that the Tribunal constituted by the State also have power to adjudicate the dispute where the “appropriate government” is the Central Government. In this regard, he has placed reliance on the third proviso to Section 10(1)(d) of the Act which has been inserted by the Amending Act 46 of 1982. He submitted that it empowers the Central Government to refer the industrial dispute in relation 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. Referring to Section 2-A(2) of the Act, he submitted that in view of the amendment in Section 2-A(2) of the Act with effect from 15.09.2010 all the provisions of the Act including the provisions prescribed under Section 10(1)(d) of the Act shall apply *mutatis mutandis* even in case of a reference directly made by a workman and a workman can directly approach labour or industrial tribunal constituted by the State Government. He, however, conceded that



the application under sub-sections (1) and (2) of Section 2-A of the Act was filed before the Tribunal after expiry of three years from the date of dismissal. He submitted that on that ground alone, the award cannot be held to be erroneous.

10. I have heard learned counsel for the parties and perused the record.

11. There is no dispute to the fact that an industrial dispute was raised by respondent no. 7 before the Assistant Labour Commissioner (Central), Patna in respect of the order of dismissal passed by the disciplinary authority on 11.01.2008, which ultimately failed and a failure report was submitted on 02.02.2011. After failure of the conciliation proceeding, the respondent no. 7 decided to file an application directly before the Industrial Tribunal, Patna constituted by the State Government under Section 2-A(1) and (2) of the Act which was registered as Industrial Dispute Case No. 02(c) of 2011. Respondent no. 7 himself framed issues of reference as under :-

“Whether the action of the Management of UCO Bank, Zonal Office, Patna in imposing the punishment of Dismissal from Bank’s Service without Notice on Sri Arya Nath Singh, Head Cashier, Chapra Branch is legal and justified ? If not, what relief(s) the workman is entitled to ?.



12. The respondent no. 7 has conceded that the application direct to the Industrial Tribunal, Patna under sub-section (2) of Section 2-A was filed after expiry of three years from the date of dismissal.

13. Sub-section (3) of Section 2-A of the Act reads as under:-

“**2-A(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).”

14. On perusal of sub-section (3) of Section 2-A, it would be manifest that an application under sub-section (2) of Section 2-A after expiry of three years from the date of dismissal is not permissible.

15. Hence, in view of the statutory provision prescribed under sub-section (3) of Section 2-A reference to the Industrial Tribunal, Patna itself was patently bad.

16. So far as another legal issue raised before this Court is concerned, there is no dispute to the fact that in the dispute in question, the “appropriate government” is the Central Government.



The contention of the petitioner is that for deciding the industrial disputes relating to the dismissal from service, which fall in the domain of the Central Government in terms of Section 2(a) of the Act in respect of the cases filed by the workmen under Section 2-A(1) and (2) of the Act, the Industrial Tribunal, Patna, which is a Tribunal constituted under Section 7-A of the Act by the State of Bihar had no jurisdiction whereas the contention of respondent no. 7 is that under the amended Section 2-A of the Act, the Industrial Tribunal, Patna, which is a State Tribunal constituted by the State of Bihar had also the power to adjudicate the dispute directly filed by the workman under Section 2-A(1) and (2) of the Act where the “appropriate government” is the Central Government.

17. In order to appreciate the arguments advanced before the Court, it would be necessary to refer to the provisions of the Act, which are relevant for the present case. They are Sections 2(a)(i), 2-A(1)(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) 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 part 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 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.”

18. Having noticed the aforesaid provision of the 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 Act is the Central Government, which is competent to deal with the matter arising out of the Act.

19. Section 7(1) of the 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 Act. Thus, the provision is prescribed under Section 7(1) of the 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”.

20. Similarly, the “appropriate Government” as defined under Section 2(a)(i) of the Act has been empowered by Section 7-A(1) of the 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 Act.

21. 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”.

22. From perusal of the aforesaid provisions prescribed under Sections 7(1) and 7-A(1) of the 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.

23. Further, from perusal of Section 10(1)(d) of the 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.

24. The third proviso to Section 10(1)(d) of the 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 Act. In exercise of its power under Section 10 of the Act, the Government has the discretion to refer existing and apprehended industrial disputes upon considering the failure report of the Conciliation Officer.

25. 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. 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.

26. 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.

27. In such view of the matter, the Industrial Tribunal, Patna, which is a State Industrial Tribunal could not have entertained the dispute directly referred by the respondent no. 7. It illegally exercised its jurisdiction, as it had never the jurisdiction to decide the case on merit.

28. Furthermore, since respondent no. 7 had resorted the adjudication of dispute by participation in conciliation proceeding which ended in failure on 02.02.2011, it was not open for him then to resort to filing the case under Section 2-A(2) of the Act before the Industrial Tribunal, Patna, as there was no conciliation proceeding pending after expiry of 45 days. The dispute referred by the respondent no. 7 was patently illegal and not maintainable. Thus, the



entire proceeding culminating in passing the impugned award is illegal and unsustainable in law.

29. In view of the fact that as the legal issues raised in the writ petition have been decided in favour of the writ petitioner, I do not think it necessary to enter into the factual aspects of the matter.

30. Resultantly, the impugned award dated 20.07.2015 passed by the learned Presiding Officer, Industrial Tribunal, Patna in Industrial Dispute Case No. 2(c) of 2011 is set aside. The writ petition stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.01.2018
Transmission Date	NA

