

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
213 (PROCEEDINGS THROUGH V.C.)**

**LPA-667-2020 &
CM-2181-LPA-2021**

Date of decision: 07.02.2022

PUNJAB GRAMIN BANK

...APPELLANT

Vs.

UNION OF INDIA AND ORS

...RESPONDENTS

***CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL***

Present: Mr. Saurav Verma, Advocate,
for the appellant.

Mr. Harpal Baidwan, Advocate,
for respondents No. 1 & 3.

Mr. Rahul Sharma, Advocate,
for respondent No. 4.

AUGUSTINE GEORGE MASIH, J.

LPA-667-2020

Challenge in this appeal is to the order dated 25.02.2020 passed by the learned Single Judge on an application moved under Section 17-B of The Industrial Disputes Act, 1947 by respondent No. 4-workman.

2. It is the submission of the learned counsel for the appellant that the stand taken by respondent No. 4-workman that he is not gainfully employed, is not sustainable in the light of the fact that the said respondent had obtained various loans, as detailed in Ground (I) (a). It is apparent that respondent No. 4 had been discharging the liability of the loans which clearly indicates that the said respondent is gainfully employed. Counsel

further submits that the onus is upon respondent No. 4-workman to prove the fact that the said respondent was gainfully employed whereas the learned Single Judge has proceeded on the assumption that it was for the employer to show that the employee was gainfully employed. This, the counsel asserts, on the basis of the principle that the workman is himself claiming to be not gainfully employed and, therefore, should have proved the same. Further, the appellant has discharged its onus once it has been shown that respondent No. 4-workman has been taking loans and discharging the same on time. He, therefore, prays that the present appeal be allowed by setting aside the impugned order.

3. On the other hand, learned counsel for respondent No. 4-workman has asserted that respondent No. 4-workman has categorically stated in his application in response to the assertions made by the appellant by stating that the loans, which have been taken by him, were of meager amounts which he had to take for fulfilling the requirements of the family. The discharge of the loan amount is with the help of the other family members especially his daughter who is working and is helping him in running the affairs of the house. His father, namely, Sh. Tikka Lal, who is a Government pensioner, is drawing pension more than ₹25,000/- per month who is also helping him in running the household. The majority of loans were consumer loans. The daughter of respondent No. 4-workman is a Non-Resident Indian settled in Canada and had been helping her father to tide over the financial problems from time to time. Merely because certain loans were availed of by respondent No. 4 would not in itself prove that he is gainfully employed especially when the loans are meager and relatable to certain essential consumer products.

4. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the impugned order but do not find ourselves in agreement with the contentions raised by the counsel for the appellant.

5. The facts are not in dispute that the writ petition was preferred by the appellant-Bank challenging the Award dated 14.06.2016 passed by the Labour Court whereby it exercised its powers under Section 11 (A) of the Industrial Disputes Act, 1947 and reduced the punishment of removal from service and substituted it with reinstatement with stoppage of three increments with cumulative effect but without back wages from the date of removal till the date of reinstatement.

6. Upon the case having been taken up for hearing, learned Single Judge had proceeded to issue notice of motion on 02.03.2017 and staying the operation of the impugned Award. It is in pursuance thereto that the application under Section 17-B of the Industrial Disputes Act, 1947 had been filed by respondent No. 4-workman praying for directing the appellant-Bank to pay him the wages last drawn by him. The learned Single Judge has proceeded to accept the said application by coming to a conclusion that respondent No. 4-workman was not gainfully employed and that he had no independent source of income. The factum that he had availed of certain consumer loans do not make him gainfully employed.

7. The argument of the learned counsel for the appellant that respondent No. 4 had obtained loans from various banks and, therefore, it is established that he is gainfully employed, is not acceptable in the light of the pleadings as respondent No. 4-workman had been able to demonstrate that earlier he had been filing Income-Tax Returns but after his removal

from service, he had not filed any Income-Tax Return. The meager loans and that too, for purchasing consumer goods, in itself, would not be enough to establish gainful employment of respondent No. 4-workman. He has been able to establish, on the basis of the pleadings, that the loans have been repaid by him with the financial help of his father, who is a Government pensioner, and the monetary assistance which he has received from his daughter, who is a Non-Resident Indian settled in Canada. This factual aspect, as stated by the respondent No. 4, has not been denied by the appellant. On facts, there is no ground for interference in the order impugned.

8. As regards the assertion of the counsel for the appellant with regard to the discharge of onus at the hands of respondent No. 4-workman about he being not gainfully employed, we are of the considered view that the said onus stands duly discharged by respondent No. 4-workman. The ground on which it was asserted by the appellant-Bank that the workman was gainfully employed i.e. the loans taken by him and the repayment/discharge thereof by the workman after his termination, suffice it to say that the resources, from which the said loans have been discharged, stand established at the hands of respondent No. 4-workman i.e. from the monetary help granted to him by his father and daughter, as detailed above, leading to a conclusion that this stand of the appellant is not acceptable.

9. In the light of the above, we do not find any ground for interfering in the impugned order dated 25.02.2020 passed by the learned Single Judge especially when the main case has been ordered to be listed for hearing for final disposal.

10. In view of the above, the present appeal stands dismissed.

CM-2181-LPA-2021

In the light of the dismissal of the main appeal, the present application for stay has been rendered infructuous and the same is disposed of as such.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(SANDEEP MOUDGIL)
JUDGE**

**February 07, 2022
PJ**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No