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

Date of Decision: 17th August, 2022

+ **W.P.(C) 4337/2021 & CM APPLs.13251/2021, 4069/2022**

MANAGING DIRECTOR AXIS BANK & ORS. Petitioners

Through: Mr. Abhdes Chaudhary, Ms. Geetanjali Setia, Ms. Manisha Suri, Mr. Nilendu Vatsyayan & Mr. Nishi Kant Singh, Advocates (M-9810982024)

versus

PRESIDING OFFICER LABOUR COURT & ANR..... Respondents

Through: Mr. Harish Kumar Garg, Advocate for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed challenging the impugned order dated 18th November, 2019, by which the Workman was reinstated by the CGIT along with full back wages and service benefits like continuity of service and seniority, etc., The operative portion of the impugned order reads:

“

ORDER

The reference be and the same is answered in favour of the workman the order of dismissal passed by the management is held to be illegal. It is directed that the workman shall be reinstated to service with immediate effect with full back wage and other service benefits like continuity of service, seniority etc. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947”



3. A brief background of this case is that the Workman was appointed for the permanent post of Business development executive as an official in the Axis bank since 8th August, 2006. He was initially posted at the Haridwar branch. Due to various complaints which were received against him, he was transferred to the Roorkee branch and his last drawn salary was Rs. 11,070/-. Again, complaints were received from various customers between August to December, 2008 which led to a show cause notice being issued to the Workman on the following grounds -

- the first allegation was that the Workman had received Rs. 1 lakh in cash from one customer and had given him a fixed deposit receipt (*hereinafter, FDR*) which was a coloured photocopy. However, the same was not a genuine FDR. Thus, the allegation was of forgery of an FDR;
- the second allegation was on behalf of six customers, wherein, it was alleged that the Workman had collected cash but had not deposited the entire amount in the customers' accounts and only in case of three customers some part amounts were deposited.

Upon these facts coming to light, the bank served a show cause notice setting out the allegations and calling upon the Workman to reply to the same. The Workman was also called for two hearings on 14th March, 2011 and 30th March, 2011 before the disciplinary committee. After the hearings, the Committee took a decision to terminate the Workman's services on 31st March, 2011.

4. Parallely, an FIR No. 259 dated 20th July, 2011 was lodged in Roorkee in respect of these allegations, under Sections 420, 467, 468 and 471 of the



IPC. Charges have been framed and the trial in the said criminal case is underway. The matter went before the Labour Court at the behest of the Workman which has, vide the impugned order, directed reinstatement in terms as set out above.

5. The submission on behalf of the bank by Mr. Chaudhary, Id. Counsel is that the bank has completely lost confidence in the Workman. The trial in the criminal case is already underway. The Labour Court has failed to appreciate that the factum of the criminal trial was mentioned in the affidavit of the bank's witness. The copy of the FIR was also placed on record. He submits that the cross-examination of the workman itself shows that the enquiry was conducted and hearing was given, the Workman admits to this fact in his cross-examination. He submits that the issue as to whether the Enquiry was fair or not ought to have been conducted as a preliminary issue and if the same was decided against the bank an opportunity to lead the evidence ought to have been granted. However, this approach was not followed by the Ld. CGIT. He submits that the Workman was repeatedly found guilty for committing various misconducts and according to the bank, he no longer enjoys the confidence of the bank, thus, legitimately terminated.

6. Mr. Kulshrestha, Id. counsel appearing for the Workman has placed vehement reliance on the impugned award passed by the Labour Court, which according to him gives a detailed reasoning as to why the enquiry was unfair and was not held properly in accordance with law. No witnesses were called by the disciplinary committee. The enquiry was completely an eyewash as the hearing was given on 30th March, 2011 and the termination order was issued on 31st March, 2011, this shows that the disciplinary committee functioned with a pre-determined mind. Moreover, there is no proof of any embezzlement



or fraudulent deposit as has been alleged. In fact, the bank has been unable to prove anything and lead any evidence even in the criminal trial. He relies upon the findings in the award to argue that the CGIT has decided four issues in favour of the Workman by a detailed award and the award is liable to be upheld.

7. Mr. Harish Kumar Garg, Id. counsel appearing for the Labour Commissioner submits that the award records that the bank's witness who had given evidence was partly cross-examined but thereafter stopped appearing before the Labour Court, thus, the opportunity was given to the bank for leading evidence, it would be incorrect to hold that the CGIT did not give appropriate opportunity to the bank to lead evidence.

8. Mr. Choudhary also submits that there is no finding in the impugned award as to whether the Workman remained unemployed and if so, how the award granted complete back wages.

9. Today, Id. Counsel for the parties have reported that the criminal trial is still ongoing and the prosecution's evidence is being recorded. A perusal of the order sheet shows that the last effective order was on 26th May, 2019 when an application under Section 311 filed by the accused / workman was allowed, giving them permission to cross-examine the prosecution witness no.4. No effective proceedings have taken place thereafter.

10. In the present petition, the workman was terminated vide letter dated 31st March, 2011. As per the Bank, two hearings were afforded to the workman. However, as per the workman, no effective hearing was afforded. The issues that were framed by the Labour Court were as under:

“(1) Whether enquiry conducted by the Management was just, fair and proper?”



(2) *Whether claimant is a workman within meaning of section 2(s) of the Industrial Dispute Act 1947?*

(3) *Whether punishment of dismissal from service commensurate to the misconduct of the claimant?*

(4) *As in terms of reference i.e., whether the dismissal of the workman is legal and justified and to what relief he is entitled to?"*

11. As per the settled legal position laid down by the Supreme Court in ***Cooper Engineering Limited v. Sh. P.P. Mundhe [(1975) 2 SCC 661]*** the first question relating to the disciplinary enquiry held by the Bank was to be decided as a preliminary issue. Depending on the order passed on the said preliminary issue, the Bank ought to have been afforded an opportunity to lead evidence on the misconduct. The relevant extract from the said judgement reads as under:

"22. We are therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making



these observations in our anxiety that there is no undue delay in industrial adjudication.”

12. This position has also been repeatedly followed by this Court recently in *M/s Ryan International v. Sh. Pan Singh [W.P. (C) 14365/2021, decided on 15th December, 2021]* and *Securitrans India (P) Ltd. v. Shri Manoj Prasad [W.P. (C) 14889/2021 & CM APPLs. 47058-59/2021, decided on 23rd December, 2021]*

13. The said established procedure, however, was not adopted by the Labour Court. The Bank has also lax in leading the evidence before the Labour Court as admittedly, one of the witnesses of the Bank tendered his evidence on 2nd May, 2017 and was only partly cross-examined. On subsequent dates, he did not appear. Thus, the award was passed without any evidence on behalf of the Bank.

14. The workman has only worked for the period between 2006 to 2011 i.e. for a period of five years and it has been almost 11 years since he was terminated. Considering that the charges against the workman are serious in nature and the Labour Court has awarded termination with full back wages without examining as to whether the workman was also gainfully employed during the interregnum, this Court is of the opinion that the matter deserves to be remanded back to the Labour Court. The workman, however, deserves to be compensated with costs due to the procedural lapses and delays caused due to the conduct of the Bank. In the facts and circumstances of this case and keeping in mind all the above mentioned factors, the following directions are issued:

- i) The impugned order dated 18th November, 2019 is set aside. The Bank is afforded one final opportunity to lead its evidence in



respect of the misconduct of the workman subject to the payment of Rs.1 lakh as cost to the workman.

- ii) The affidavits in evidence of the witnesses on behalf of the Bank shall be filed in one go by the 15th September, 2022.
- iii) The matter shall be taken up before the Labour Court for directions on 26th September, 2022. On the said date, schedule shall be fixed for cross-examination of the Bank's witnesses. No adjournment shall be taken by the Bank. The entire evidence shall be concluded on or before 30th November, 2022.
- iv) The Labour Court shall thereafter hear the final arguments and pronounce the final order by 31st December, 2022.

15. The costs shall be paid to the Workman directly, on the next date before the Labour Court i.e., 26th September 2022.

16. The Labour Court shall adjudicate the matter purely on merits without being affected by the observations of this Court in the present order or in the impugned order dated 18th November, 2019.

17. List before the Labour Court on 26th September, 2022.

18. Petition is disposed in the above terms. All pending applications are also disposed of.

19. Copy of this order shall be communicated to the Presiding Officer, CGIT – cum Labour Court No. – II, Room No. 208, 2nd Floor, Rose Avenue Court Complex, I.T.O. New Delhi – 110002 by the Registry.

PRATHIBA M. SINGH
JUDGE

AUGUST 17, 2022

Rahul/SR